cleanwater PROGRAM

Protecting Alameda County Creeks, Wetlands & the Bay

399 Elmhurst St.
Hayward, CA
94544
p. 510-670-5543

MEMBER AGENCIES:
Alameda
Albany
Berkeley
Dublin
Emeryville
Fremont
Hayward
Livermore
Newark
Oakland
Piedmont
Pleasanton
San Leandro
Union City
County of Alameda
Alameda County Flood Control and Water Conservation District
Zone 7 Water Agency

July 10, 2015

Transmitted via email: mrp.reissuance@waterboards.ca.gov

Dear Dr. Mumley:

By email dated May 11, 2015, the Water Board indicated it would accept written comments on the Draft Municipal Regional Stormwater Permit (Draft MRP) until 5 pm on July 10, 2015. It was requested that written comments be submitted to the following email address: mrp.reissuance@waterboards.ca.gov. and that all attachments to the email should be submitted as one electronic file with a file name clearly identifying the commenting entity. In response to this Water Board notice, I am filing these comments on behalf of the Alameda Countywide Clean Water Program (ACCWP) with attachments in the form requested.

Thank you for the opportunity to file these comments – we appreciate all the time that you and your staff have taken to meet with us and other MS4s in an attempt to reach agreement on this very complex next phase of the MRP. Our comments on the highest priority issues are below. Additional specific comments on these and other provisions are included in the attached table.

Provision C.12: Polychlorinated Biphenyls (PCBs) Control

C.12.a. – ACCWP #1 – DCB

Provision C.12.a: The 0.5 kg/yr and 3.0 kg/yr PCB load reduction performance criteria should be removed. Compliance should be determined based upon implementation of specified control measures.

1) There is no reasonable certainty regarding the ability of best management practices (BMPs) to meet the proposed load reduction performance criteria. The Fact Sheet acknowledges that achievement of the performance criteria is speculative at this stage of load reduction methodology, and describes a default approach to estimating load reductions resulting from foreseeable control measures implemented during the permit term. Most of the BMPs evaluated during MRP 1 that were thought to have promise turned out to have very limited load reduction benefits. For example, it was thought that enhanced street sweeping and drop inlet cleaning, and diversion of stormwater flows to sanitary sewers, would be able to achieve significant reductions in PCB loads. Further study during MRP 1 has determined that this is not the case.

Only two BMPs as more fully discussed below currently appear to have the potential to significantly reduce PCB loads: source property identification and remediation, and managing PCB containing waste during building demolition. However, lack of reliable data and Permittees' inability to control all aspects of implementation mean there is no reasonable certainty that the stipulated load reductions could be achieved.

C.12.a. – ACCWP #2 – DCB

Source Property Identification and Remediation: Through previous investigations, Permittees have identified several sites in old industrial areas with significant PCB contamination. Based upon this finding, we are currently conducting a screening of all old industrial parcels throughout the County, and conducting PCB analysis of sediment adjacent to the sites that appear to have the highest likelihood of being a PCB source property. Through this process we may find some sites that are significant sources of PCBs. However, the number of sites will probably be relatively low, and it will be **difficult or impossible to develop an accurate estimate of the annual load of PCBs from these sites in advance of their investigation and remediation** under the direction of appropriate state and federal agencies.

C.12.a. – ACCWP #3 – DCB

Managing PCB Containing Building Demolition Waste: There are significant quantities of legacy PCBs in certain buildings (an estimated 4.7 kg average in 1950 to 1980 masonry/concrete structures), but **the amount of PCBs released to the storm drain system during demolition is completely unknown**. Permittees have conducted an extensive literature review in an effort to develop a reasonable estimate. There is very little published data, a wide range of estimates that rely on personal judgment for key assumptions, and no studies of PCBs released from building demolition to storm water runoff. Developing an accurate estimate within several months (April 2016) or even several years is infeasible given the wide variation from site to site in the mass of PCB containing hazardous waste, the concentration of PCBs, the types of waste, the type and size of structure, the control BMPs implemented, and the type of demolition. The proposed 3 kg/yr load reduction relies heavily on the assumed load reduction from managing building demolition waste. This assumption is unfounded and cannot form the basis for a regulatory PCB load reduction requirement.

C.12.a. – ACCWP #4 – DCB

2) The Draft Permit states that Permittees need to develop an allocation scheme or the default will be by population. Neither option is feasible. There are several problems with developing an alternative load allocation among Permittees in addition to the unrealistic timeframe (i.e., April 2016):

C.12.a. – ACCWP #5 – DCB

(1) There is no legally binding mechanism to reallocate loads that would assure permit compliance to all parties; and

C.12.a. – ACCWP #6 – DCB

(2) Permittees whose allocation would rise under an alternative allocation could not agree to a higher allocation and put their jurisdiction in jeopardy of non-compliance when there is no certainty regarding meeting the target.

C.12.a. – ACCWP #7 – DCB

In addition, a population-based allocation is not feasible as some of our newer cities (e.g., Dublin, Pleasanton, Livermore, Fremont) have relatively large populations and very little old industrial or old urban (pre-1980) development andtherefore, very little opportunity for PCB reduction credit through either building demolition (C.12.f) or Green Infrastructure implementation (C.12.c).

C.12.a. – ACCWP #8 – DCB

3) PCB load reductions are not required by the PCB TMDL. The TMDL Implementation Plan states that PCB reductions should be evaluated after 10 years (i.e., 2020). In 2020, after MRP 2 requirements have been completed, we will have a much better understanding of what can be achieved and through which combination of control measures and will have provided updates to the initial load estimation methodologies. Load reduction targets could then be set at that time.

C.12.a. – ACCWP #9 – DCB

The permit needs to provide Permittees with a **clear and feasible path to achieving compliance** based on implementation of PCB control programs described in C.12 that can realistically be planned, that have predictable removal outcomes, and that would be completed during the permit term. Therefore, the load reduction targets should be removed, especially the 0.5 kg/yr criterion for the second year of the permit, which is unnecessary and burdensome.

C.12. a.– ACCWP #10 – DCB

If the 3.0 kg/yr performance criterion for the permit term is retained, it should be explicitly stated in the form of an action level to avoid any confusion between the permit's performance metrics and effluent limits; clarifying this legal definition has important implications for enforcement and the risk of potential third party lawsuits. See the legal comments of our attorney, Gary Grimm.

C.12.a – ACCWP #11 – DCB

Also, the Permit Fact Sheet should fully describe the default interim accounting method for all of the proposed PCB control measures.

C.12.b. – ACCWP #11 – DCB

Provision C.12.b: Revise documentation approach for interim load estimation methodology. If submittal is required, allow at least twelve months after the permit adoption, especially if documentation of load estimation methodology is required.

The Tentative Order notes that the "full description of measurement and estimation methodology" required in this provision is intended as a documented version of the default interim method in the Fact Sheet, applicable to this permit term. In conjunction with the above requested changes in C.12.a, this submittal should be deleted as unnecessary, since a description of a permanent method will be provided before the end of the permit per Provision C.12.b.iii(3).

C.12.b. – ACCWP #12 – DCB

If load reduction targets are retained, the Fact Sheet should document all of the parameters and assumptions involved in this method, which BASMAA representatives provided to Water Board staff in summary form.

C.12.f. – ACCWP #13 – DCB

Provision C.12.f: Managing PCBs waste in building demolitions should be part of a comprehensive federal and State effort to close gaps in the existing regulatory structure, and recognize limits to Permittee jurisdiction.

1) Permittees are willing and able to partner with other agencies in this effort but cannot be the leads for implementing necessary upgrades or interpretations to federal and state PCB regulations. The Draft Permit recognizes that working with state and federal agencies is necessary to create a coordinated program for management of PCB-containing building materials, like those successfully implemented for asbestos or lead-based paint. ACCWP Permittees and other municipalities collaborated with the San Francisco Estuary Partnership's PCBs in Caulk Project, which identified gaps in existing information and regulatory approaches to PCBs in existing buildings. Permittees can encourage proponents of demolition projects to abate PCB containing materials in accordance with existing regulations but cannot pre-empt or anticipate future federal and state regulations.

C.12.f. – ACCWP #14 – DCB

2) Discussions with Water Board staff indicate that USEPA Region 9 contacts overseeing PCB clean-ups will not commit to timely review or response of proposed abatement plans for projects with PCB-containing building materials, if Permittees were to require documentation of abatement plan submittal to USEPA prior to issuing demolition permits. Such uncertainty and wasted efforts would expose the projects to highly uncertain time and cost impacts.

C.12.f. – ACCWP #15 – DCB

3) The Fact Sheet lacks clarity regarding the default assumptions used to estimate potential load reductions associated with this provision, which are subject to large uncertainties due to lack of published data on release to runoff of PCBs in building materials or from demolition activities. USEPA has not shared results of recent clean-ups or research which would inform updated guidance and best practices, nor made any statements on whether demolition activities will be addressed in its PCB rulemaking process (originally announced in 2010).

Permit language should recognize that a truly comprehensive framework will take longer than 3 years and that Permittees have no control over the participation or action timelines of federal, state or regional agencies.

Provision C.10. Trash Load Reductions

C.10. – ACCWP #16 – DCB

1) The schedule for meeting the 70% and 100% trash reduction targets should be extended.

Permittees have made a great deal of progress over the last 5 years in trash load reductions. However, we are still determining which BMPs are most effective as reductions are often variable and difficult to quantify. Therefore, informed decisions regarding the most effective expenditure of public funds cannot be made until more certainty regarding which BMPs will lead to full compliance. For example, through the Capturing California Trash Grant, BASMAA is conducting a study to determine if retractable drop inlet screens in combination with frequent street sweeping has a comparable effectiveness to full trash capture devices. If

the BASMAA study shows full trash capture equivalence, using inlet screens in combination with street sweeping may be a more efficient approach to compliance due to reduced maintenance cost or they could be used in areas where full trash capture systems cannot be installed.

C.10. – ACCWP #17 – DCB

The reduction targets should be changed to July 1, 2020 for a 70% reduction and July 1, 2025 for 100% reduction. The 2025 deadline is consistent with the Statewide Trash Plan. Even with time extensions, these are still extremely aggressive targets. A useful comparison is the
State's requirements for reducing solid waste to landfills under AB939. AB 939 was passed in 1989 and required a 50% reduction in waste within 11 years (2000). As with trash, it was very difficult to establish a baseline even though the solid waste stream is much easier to measure than litter in the environment. Local and regional jurisdictions are now (26 years later) trying to achieve a 75% reduction. In addition, waste management agencies are not subject to the same funding constraints as stormwater programs are under Prop 218. Smaller, less- urbanized jurisdictions should more easily be able to achieve the reductions under the extended schedule. However, for larger and more heavily trash-impacted jurisdictions it may be impossible to achieve required reductions even within the extended timeframe.

C.10. – ACCWP #18 – DCB

Another reason to extend the compliance dates is that many of the highest trash problem areas are along Caltrans roadways. Permittees have existing maintenance agreements with Caltrans for many portions of Caltrans roadways. Caltrans has a stormwater permit requiring similar trash load reductions, and Caltrans is interested in partnering with Permittees to revise maintenance agreements and share in the cost of installation and maintenance of full trash capture devices along its roadways. Caltrans has until 2025 to meet its reduction targets under the Caltrans statewide permit. Given the differences in the timelines in the Tentative Order
and the Caltrans permit, this makes it difficult to partner and collaborate with Caltrans on trash load reduction in this region. A revised schedule would also line up with Caltrans' schedule and make it much easier to coordinate with Caltrans.

C.10.b.iv. – ACCWP #19 – DCB

2) Source Control (C.10.b.iv): The maximum offset allowed for source control actions should be increased to 15%.

The Alameda Countywide Storm Drain Trash Monitoring and Characterization Project demonstrated an 8% reduction from existing source control actions. Existing source control actions could be enhanced to reduce trash further, and additional source control actions could be developed. In addition, source control is much more effective and efficient approach to
reducing pollution as compared to removing pollutants once they are in the environment. These source control efforts should be encouraged by increasing the maximum offset to at least 15%. Increasing this offset was strongly encouraged by many persons at the Water Board July 8th
hearing. These offsets should definitely be increased, encouraged, and not phased out in future years.

C.10.c.i. – ACCWP #20 – DCB

3) Additional Creek and Shoreline Cleanup (C.10.c.i): The cap on the maximum offset should be increased.

Municipalities spend a tremendous amount of resources to clean up trash from in and around local creeks and the Bay shoreline. This trash is directly impacting local waterways. However, the trash is often deposited along these waterways through mechanisms other than discharge from the municipal storm drain system. For example, with prevailing onshore winds coming from the west, East Bay shoreline locations see a majority of trash from Peninsula sources. Cleanup efforts are often the most effective approach to reducing trash impacts to waterways, and these efforts should be encouraged. The importance of these efforts was emphasized by many at the July 8th Water Board hearing. The maximum offset should be increased to at least
20%.

C.10. – ACCWP #21 – DCB

4) Visual Assessments should not be used to determine compliance.

The Visual Assessment Protocol has not been vetted sufficiently to be used as a Permit compliance tool for the following reasons: 1) The temporal and spatial variation is not well understood or quantified;

C.10. – ACCWP #22 – DCB

2) There is an element of subjectivity to the assessments that cannot be eliminated;

C.10. – ACCWP #23 – DCB

3) The definitions of generation rate categories (i.e., Very High, High, Moderate, and Low) are too broad to detected actual trash reductions in many cases; and,

C.10. – ACCWP #24 – DCB

4) How to account for variations from one assessment to the next has not been determined. Conducting visual on-land assessments is time consuming; drawing staff and finite resources away from actual trash reduction efforts that directly improve water quality. Visual assessments should be used for only qualitative assessment during this permit term.

C.10. – ACCWP #25 – DCB

5) The requirement to map all private property down to 5,000 sq. ft. in moderate or higher trash generation areas should be deleted.

This mapping would require a tremendous resource intensive effort without any clear benefit. It is often nearly impossible to determine how storm drains are plumbed at older developments. Maps of these private storm drain systems are hard to obtain and often non-existent or inaccurate. This requirement should be deleted.

C.10.b.v. – ACCWP #26 – DCB

6) The Receiving Water Observations requirement (C.10.b.v) should be removed.

Conducting receiving water observations is another requirement that will take significant resources without any clear benefit and will result in the diversion of resources from trash reduction efforts. No protocols have been established and there is tremendous variation in the amount of trash from site to site and over time depending on the timing and size of storm events. It is not clear that the data produced from this effort could guide future management actions.

C.10.b.v. – ACCWP #27 – DCB

Through the Tracking California Trash Grant, BASMAA is working with Five Gyres to develop a protocol for sampling and quantifying trash discharged during storm events. The receiving water monitoring requirement should be removed from this permit and reconsidered once a protocol has been established. We also recommend that receiving water observations be used solely as trend monitoring of trash in the environment and not for compliance determinations.

Provision C.3.j. Green Infrastructure

C.3.j.i. – ACCWP #28 - DCB

1) The schedule for developing the Green Infrastructure framework (C.3.J.i) should be extended to 24 months from the Permit effective date.

The new Green Infrastructure approach and requirements are very comprehensive, will require significant financial resources, and will require in-depth discussion and planning efforts by local agencies over upcoming years. These efforts will significantly affect many areas of municipal government. Stated differently, this will be a major commitment for Permittees extending many years into the future.

It should be assumed that most Permittees will need to have the framework approved by their governing bodies rather than the city or county manager. Also, with many Permittees having multi-year adopted budgets, time must be given to source and allocate the funding mechanisms, and then include in the next round of budget adoption. The requirements of the framework are extensive. Developing a framework for approval by a governing body will require significant time and resources, and coordination and cooperation among various agencies with often conflicting priorities and constraints. The schedule for completion must be extended to 24 months from the Permit adoption in order to do this meaningfully and effectively.

C.3.j.1.g. – ACCWP #29 - DCB

2) Provide more flexibility for sizing treatment controls at road projects (C.3.j.1.g.).

Provision C.3.j.1.g requires public projects (e.g., roadway projects) to meet the C.3.d sizing criteria. The C.3.d. sizing requirement generally requires that the treatment system is about 4% of the area draining to the treatment system, has a minimum infiltration rate of 5 inches per hour, and has a specified type and depth of soil and gravel. As was learned through the Green Streets pilot projects required under the current permit, that standard is often impossible to achieve.

Roadway retrofit treatment projects are often highly constrained due to competing needs for space such as pedestrian and bicycle traffic, as well as underground utilities. There is also often a large amount of runoff from adjacent private parcels that cannot be limited or diverted. The minimum 5 inch per hour infiltration rate will also preclude the planting of trees in the treatment area as trees need a slower draining soil (e.g., 3 to 4 inches per hour). Municipalities will want to include trees within their green streets projects, and they should be able to include tree wells within their treatment calculations. The requirement to meet the C.3.d sizing criteria will result in less treatment within roadway retrofit projects as the criteria will often not be possible to meet.

Greater flexibility should be included in the permit. The allowance for all Permittees to provide a single alternative approach is not feasible as local conditions and constraints vary among jurisdictions and across the region. At a minimum the provision should be revised to allow countywide programs to submit an alternative approach.

C.17. – ACCWP #30 - DCB

Reporting

Reporting on two permits in one Annual Report is difficult and confusing. Many permit requirements are based on implementing requirements on a July 1 through June 30 implementation schedule. If a new permit with revised annual requirements becomes effective after July 1, it's not clear what portion of, if any, of those annual requirements needed to be implemented during the less than one year period of the old and new permit. To avoid this problem, one solution is to make the effective date of the new permit July 1, 2016. The schedule for completion dates could take into account the Permit adoption date as Permit adoption provides certainty.

Legal – ACCWP #31 - DCB

It should be noted that these comments are provided solely to assist the Water Board's consideration of and potential reaction to concepts or language it may, in its discretion, elect to advance relative to the reissuance of the Municipal Regional Permit for stormwater discharges. It is not intended and should not be misconstrued as an offer to take on, or volunteer for, any potential permit requirement that represents a new program or higher level of service relative to the MRP or its predecessor permits.

Sincerely,

James Scanlin, Program Manager

Attachments: Table 1: Additional Specific Comments
Table 2: Proposed Revisions to Provision C.7: Public Outreach
Table 3: Initial Response to Issues Raised at July 8 Board Hearing

cc: ACCWP Management Committee Representatives

Provision	Issue	Suggested Revision
General – ACCWP #32 - DCB General Comment	Numerous time schedules and submittal compliance dates are too soon, and do not allow the Permittees to sufficiently prepare and internally review the required documents and submittals. As a complicating factor, the permit predicted adoption date and effective date is uncertain and keeps changing. Further, the specifics of the requirements are not known at this early date and cannot be fully known until MRP 2 is adopted by the Water Board. Thus, due to local agency legal requirements as well as municipal policy considerations, Permittees cannot commit or prepare to comply until the new MRP is in effect. It is not reasonable to take the view that once Permittees are put on notice of potential new requirements and timelines in drafts, that they should be moving forward with the new projected timelines in mind – this is erroneous in that the only requirements that apply prior to MRP 2 adoption are those contained in the current MRP.	To address this significant concern, we suggest that any time schedules and submittal dates in the drafts or Tentative Order should be established with a specific and stated projected adoption date in mind, and then if the adoption slips beyond that date or happens at an earlier date, all time schedules and submittal dates would be adjusted accordingly. Another alternative would be to do as the Water Board often does in Site Cleanup Orders by setting deadlines and submittal dates within a certain number of months after permit adoption, rather than specifying actual calendar dates. Then the reasonableness of the deadline can be effectively assessed.
General – ACCWP #33 - DCB	There are a number of requirements for "Permittees" that are not applicable to flood control districts.	Change to "population-based Permittees" where applicable.
C.2.f.ii.2 - ACCWP #34 - DCB	Only 10 days are allowed for corrective action.	The ten-day timeframe should be extended to 30 days.
C.3.b: project size threshold – ACCWP #35 - DCB	We support the proposal to retain the existing thresholds of impervious surface for Regulated Projects (i.e., 10,000 sq. ft. and 5,000 sq. ft. for certain projects)	Keep as is.
C.3.b: 50% rule – ACCWP #36 - DCB	Most of the redevelopment projects result in a reduction in the overall amount of impervious surface, and have other environmental benefits as well. The 50% rule acts as a disincentive to do these environmentally beneficial infill	Delete this provision.

	projects because it is often very challenging to install measures to treat runoff from areas not being modified by the project.	
C.3.d.iv: "Grand-fathering" – ACCWP #37 - DCB	We do not support the proposal to change the grandfathering clause such that projects not under construction are subject to the new permit requirements. Private and public projects are conceived of, financed, and designed with the existing regulations in mind. Changing regulations at the point that a project is about to be constructed can prevent an otherwise environmentally beneficial project from happening. Furthermore, grandfathered projects represent a small amount of regional impervious surface.	Revise to provide greater flexibility. Also, following language should be added to the end of C.3.d.iv (Due Date for Implementation): "unless the development project has their own regional order from the Water Board. If there is an existing order that is still valid, the project shall follow the guidelines of that order."
C.3.e.vi: Reporting on Special Projects – ACCWP #38 - DCB	The purpose of the Special Projects provisions, per the language in the permit, is to incentivize projects that are beneficial at a watershed scale. Requiring Special Projects to first demonstrate LID infeasibility does little to incentivize these projects.	Revise provision to make reporting less burdensome.
C.3.h.ii.6: O&M Inspection Plan – ACCWP #39 - DCB	The requirements for the O&M Plan are unnecessarily burdensome.	Suggested Revisions: 1) Remove requirement to inspect impervious surface installations. 2) Remove the requirement for 20% of treatment systems to be inspected every year. 3) Require all treatment systems to be inspected at least once every 5 years.
C.3.i. Small Projects – ACCWP #40 - DCB	We support the proposal to retain the existing provisions concerning small projects.	Keep as is.
C.7: Public Outreach– ACCWP #40b - DCB	The provision contains very specific requirements that may turn out not to be the most effective approach.	A proposed alternative approach that allows greater flexibility while still ensuring that the outreach will be effective is attached.

C.8.d Subsection numbers– ACCWP #41 - DCB	C.8.d.i is used twice (for biological assessment and chlorine)	Renumber C.8.d subsections up through c.8.d.vii
C.8.d.ii(4) Temperature triggers– ACCWP #42 - DCB	Temperature trigger definition is based on non-California studies, does not acknowledge other environmental factors affecting variation in salmonid sensitivity to temperature.	Need to include references to existing watershed specific temperature thresholds developed through other regulatory processes (e.g., agreements with NMFS)
C.8.d.v Toxicity/Pollutants in Sediment - Table 8.2– ACCWP #43 - DCB	Table includes several analytes with low benefit for ambient creek sampling in comparison to analytical costs, or are addressed by C.8.f	Delete PCBs, mercury and organochlorine pesticides from table
C.8.d.v(4)(c) Toxicity/Pollutants in Sediment Follow-up– ACCWP #44 - DCB	MRP 1.0 results show trigger Criterion for pollutants without WQOs is too conservative when "results exceed Probable or Threshold Effects Concentrations"-- should only consider follow-up when results exceed Probable Effects Levels (PECs)	Delete "or Threshold Effects Concentrations"
C.8.e.ii(1) and (2) - Stressor ID – ACCWP #45 - DCB	Statements requiring "minimum of one [project]for toxicity" assumes there will be at least one toxicity threshold exceedance in the region or county. Also overly constrains selection of regional projects.	Delete requirement (preferred) or add qualifying text or footnote that this would only apply when at least one qualifying toxicity threshold exceedance appears on the list required by Prov. C.8.d.i)
C.8.e.iii(1) initiation of SSID projects – ACCWP #46 - DCB	Provision requires at least half of SSID projects to be initiated by 3rd year, making project selection rely more heavily on data generated during the previous permit term or in years 1-2 of this permit.	Delete requirements or state that initial workplans based on first 2 years can be modified in Year 3 of permit.
C.8.e.iii(1)(f) SSID toxicity studies– ACCWP #47 - DCB	Provision requires Toxicity Identification Evaluation (TIE) when no chemical pollutant is associated with the sample, skipping Toxicity Reduction Evaluation (TRE) as possible initial step. This skips a cost effective step that could potentially eliminate the need for a TIE which has a high likelihood of failure in cases of moderate toxicity.	Reinstate TRE option by incorporating text and references footnote from the existing MRP provision C.8.d.i(1).
C.8.e.iii(2) completion of SSID projects during permit term– ACCWP #48 - DCB	Requirement to "complete all steps for half of the required SSID projects" does not allow for possible multiple iterations of control actions and evaluation, or the difficulty of	Delete second sentence and replace with: "The Permittees shall attempt to complete Steps 1 and 2 for half their required

	determining effectiveness for episodic exceedance conditions. Also the second sentence regarding intent of provision is more appropriate to introduction of provision than this particular step. This provision should refer to completion of Steps 1 and 2 (SSID workplan and investigation), not all of the Step 3 follow-up actions.	SSID projects, at a minimum, during the permit term".
C.8.e.iii(3)b Completion of SSID project– ACCWP #49 - DCB	Written concurrence of Executive Officer should not be required to determine an SSID project is completed, especially when the Permittee has determined MS4 systems are not contributing to an exceedance.	Delete requirement for Executive Officer approval, and instead state that the Permittee's determination will be highlighted in the reporting project status per C.8.e.iv.
C.8.e.iii(3)c Completion of SSID project – ACCWP #50 - DCB	In first line, "inclusive" appears to be a typographical error. Concurrence or approval should not be required for determination of completion	Replace "inclusive" with "inconclusive" and revise second sentence per above comment on C.8.e.iii(3)b.
C.8.f.ii- Table 8.4 Number of Pollutants of Concern samples – ACCWP #51 - DCB	Table 8.4 shows numbers in parentheses for yearly minimum number of samples of each of the listed pollutants or pollutant groups. This is overly restrictive, particularly for the pollutants listing only 1 or 2 samples per year, since it may be both more cost-effective and a stronger sampling design to group a larger number of samples in some years while sampling none in others.	Delete minimum annual number or add footnote that states this number may be averaged during first 2-3 years of permit and is not required for later years after the required total number of samples has been achieved.
C.8.f.iii Table 8.5 Pollutants of Concern - analytical methods– ACCWP #52 - DCB	Table 8.5 requires 40 PCB congeners be analyzed using USEPA method 1668. While the February 2008 PCB TMDL Basin Plan Amendment Staff Report recommended this method as a basis for future data collection in the Bay to "facilitate data comparability for long-term trend analysis"(Section 4.4), it also notes that PCB concentrations in different sample matrices can vary widely. Method 8082A is acceptable to SWAMP and is being used for congener analyses that provide sufficient resolution for current stormwater POC	Revise Table 8.5 Laboratory Analytic Methods for PCBs to also allow congener analyses by other USEPA methods including 8082 (possibly also 8270D modified by Method 1625), when appropriate for addressing management information needs (#1 and #3as a minimum) as documented in the annual POC Monitoring Report per C.8.g.iv. Consider also adding a footnote to clarify

	monitoring related to this provision's management information need #1 (Source Identification). Also, the second sentence in provision erroneously refers to "Table 8.2"	reference to the "RMP 40" congener list. Also, correct table reference in second sentence to "Table 8.5".
C.8.g.iv Pollutants of Concern Monitoring data submittal– ACCWP #53 - DCB	This provision's last sentence requires submittal by October 15 of data types not accepted by CEDEN, collected during the previous Water Year which ends on September 30. This is an unrealistic timeframe for data collected during the last 3 months of the Water Year, especially involving analysis of PCB congeners.	Change date for submittal of non-CEDEN data to March 15, which will be consistent with the reporting requirements in the rest of C.8.g.
C.10.b.i.a. full trash capture system maintenance– ACCWP #54 - DCB	This provision specifies maintenance frequencies based upon the trash generation rate of the surrounding land use. This is not the best approach as other factors such as the size of the catch basin, the number and type of trees in the area, and weather are more relevant factors.	Permittees should be given the flexibility to determine the appropriate frequency of cleaning with documentation of adequacy. For example, "inspect, and clean as necessary, all FTC devices at least once per year. Devices greater than 50% full when inspected will be cleaned more frequently."
C.10.b.ii.b. Non-full trash capture Assessment– ACCWP #55 - DCB	The draft permit requires on-land visual assessment of all Non-FTC management areas. The proposed visual assessment method is not appropriate for all types of trash reduction measures. The visual assessment protocol is designed for use along the road surface, curb, and sidewalk of public right-of-way. It is not designed to be used on areas such as a parking lot of a large shopping center, or to assess trash management in and around commercial dumpsters.	This provision should be revised to allow other types of assessment.
C.10: full trash capture equivalence– ACCWP #56 - DCB	The Permittees are currently evaluating combinations of management actions (e.g., street sweeping in combination with retractable inlet screens) to assess equivalency to full trash capture. If these prove to be equivalent, they should be allowed under this permit.	Revise to allow for FTC equivalent actions to be accepted.

C.12 , C.11 – ACCWP #57 - DCB	Introductory paragraph for C.12 should clarify that only a portion of the stormwater load and waste load allocation (20 kg/yr and 2 kg/yr respectively) aggregated for the entire region apply to the Permittee jurisdictions.	Clarify that per the PCB TMDL the aggregate load and waste load allocation for Permittees are 14.4 kg/yr and 1.6 kg/yr respectively.
C.12.a - Load reduction performance criteria for compliance– ACCWP #58 - DCB	Load reductions numbers are not required by the TMDL, and may be subject to misinterpretation as numerical effluent limits	Delete Table 12.1 and all text references to numerical load reduction targets, especially the 0.5 kg/yr criterion for the second year of the permit. Any numerical performance criteria remaining in this provision should be explicitly stated in the form of an action level. State that compliance will be determined based on implementation of control measures (if necessary these should be associated with the action levels per comments below).
C.12.a.ii and C.12.b.iii(1) Permittee-specific load reductions– ACCWP #59 - DCB	Requirement that Permittees submit a Permittee-specific allocation scheme is infeasible and lacks a legal mechanism binding among the Permittees	Delete this requirement from permit; if retained change submittal date to at least 12 months after adoption date.
C.12.a.iii Reporting and submittal dates (also applies to C.11.a.iii) – ACCWP #60 - DCB	Submittal dates for initial lists of watersheds and control measures are too early, especially but not limited to Permittees reporting committed construction milestones for implementing control measures.	Revise submittal dates to at least 12 months after adoption date for C.11/12.a.iii(1) and subsequent Annual Report for C.11/12.a.iii(2)
C.12.b.iii, C.11.b.iii Reporting dates for load estimation methodology and control measures– ACCWP #61 - DCB	Provision C.12.b.i notes that the measurement and estimation methodology to be applied during the permit term is a default interim method and lists some of the assumptions used to estimate projected load reductions for each control measure (previously provided by BASMAA representatives). However the Fact Sheet omits key assumptions and parameters regarding load estimation for PCBs in demolition	Eliminate C.11/12.b.iii requirement for April 2016 submittal of documentation for the interim load assessment methodology. Include all parameters and assumptions for this methodology in the Fact Sheet. (BASMAA representatives will work with Water Board Staff to provide comparable information for mercury). Otherwise, revise

	wastes, while suggesting that this control measure could provide a significant level of PCB load reduction. Requiring formal documentation of these early in the permit is an unnecessary exercise and efforts should be focused on refining the method for use in subsequent permit terms, per C.11/12.b.iii(3) in conjunction with changes requested for C.12.a	submittal dates to at least 12 months after adoption date for initial method documentation and subsequent Annual Report for estimated load reductions from control measures implemented up to that date and previously uncredited.
C.12.a,b , C.11.a,b Reporting and submittal dates – ACCWP #62 - DCB	Reporting starting dates for initial list of watersheds and control measures are too early and have little relation to when the permit will actually be adopted. Reporting milestones for C.12.a are too close together in relation to each other as well as with the C.12.b accounting method for assessing load reductions. Annual calculations are an onerous effort that competes with effective implementation for scarce resources	If the present structure of C.12.a-b is retained, the reporting submittal milestones and intervals must be figured from the time of actual permit adoption and effective date. Milestones and reporting updates should be spaced farther apart.
C.12.c,d, C.11.c,d Green Infrastructure planning and implementation– ACCWP #63 - DCB	Provision C.12.c incorrectly assumes that PCB reduction concerns can drive the decisions of where initial Green Infrastructure projects and private redevelopment will result in greater load reductions, but siting of these improvements is subject to other factors not fully in in the Permittees' control. Reporting requirements in C.12.c-d are not fully coordinated with those in C.3.j, in particular regarding the 2019 Annual Report, which requires simultaneous submittal of Green Infrastructure Plans and the TMDL Implementation Plan. Also, the future time intervals for estimating cumulative long term load reductions per C.12.c.ii(2)(b-c) are different from those for impervious surface retrofit area as required by C.3.j.i(1)(c) thus unrnecessarily increasing the number of planning analyses to be done.	Delete provisions C.11/12.c or at minimum remove Tables 11.1 and 12.2. Otherwise, allow at least an additional 6 months after submittal of Green Infrastructure Plan for Permittees to prepare additional analyses and conduct peer review for the Green Infrastructure aspects of the TMDL implementation plan, and align timeframes for future projections with those required in the plan submittals for C.3.j.

C.12.f Manage PCB-containing materials and demolition wastes - general– ACCWP #64 - DCB	As previously noted by BASMAA representatives, the MRP requirement that Permittees develop a framework for managing PCB-containing building wastes places undue burden on local agencies for a problem that should be addressed on a more comprehensive basis by state and federal agencies. Examples of workable regulatory approaches aligned with certification and other institutional infrastructure are those associated with the BAAQMD's permitting for demolition or renovation projects involving removal of asbestos, or DTSC's close-out process for projects involving lead-based paint, which both were developed in conjunction with federal regulatory initiatives.	Consider using Water Board and USEPA authority to develop a single required PCB removal permit for applicable demolition or renovation projects analogous to the protocols used by the BAAQMD or DTSC for projects involving removal of asbestos or lead-based paint.
C.12.f.ii(1) Implementation timeframe for managing PCB-containing materials and demolition wastes – ACCWP #65 - DCB	Despite recommendations arising from SFEP's PCBs in Caulk Project that standardized cleanup plans would greatly reduce the uncertainties facing applicants for demolition projects about time and cost required to comply with existing state and federal regulations regarding handling and disposal of PCB wastes. Development of such standardized plans would require cooperation of USEPA staff and is not wholly in control of the Permittees.	Revise the effective date of implementation to be set at a reasonable interval (e.g. 18-24 months) after USEPA approval of specific guidelines for standardized clean-up plans for the categories of projects to be affected.

Table 2:
ACCWP MRP 2 Proposed Public Outreach/C.7. Revisions

MRP Provision	Current MRP Requirement	MRP 2.0 Update(s)
C.7. Public Information and Outreach – ACCWP #66 - DCB	Each Permittee shall increase the knowledge of the target audiences regarding the impacts of stormwater pollution on receiving water and potential solutions to mitigate the problems caused; change the waste disposal and runoff pollution generation behavior of target audiences by encouraging implementation of appropriate solutions; and involve various citizens in mitigating the impacts of stormwater pollution.	Each Permittee shall increase the awareness of the target audiences regarding the impacts of stormwater pollution on receiving water and potential solutions to mitigate the problems caused; positively influence the waste disposal and runoff pollution generation behavior of target audiences by encouraging implementation of appropriate solutions; and involve residents in mitigating the impacts of stormwater pollution.
C.7.a. Storm Drain Inlet Marking – ACCWP #67 - DCB	i. Task Description – Permittees shall mark and maintain at least 80 percent of municipally-maintained storm drain inlets with an appropriate stormwater pollution prevention message, such as "No dumping, drains to Bay" or equivalent. At least 80% of municipally-maintained storm drain inlet markings shall be inspected and maintained at least once per 5-year permit term. For newly approved, privately maintained streets, Permittees shall require inlet marking by the project developer upon construction and maintenance of markings through the development maintenance entity. Markings shall be verified prior to acceptance of the project.	Move to C.2: Permittees shall have a program to mark and maintain municipally-maintained storm drain inlets with an appropriate stormwater pollution prevention message, such as "No dumping, drains to Bay" or equivalent. Move to C.3: For newly approved, privately maintained streets, Permittees shall require inlet marking by the project developer upon construction and maintenance of markings through the development maintenance entity. Markings shall be verified prior to acceptance of the project.
C.7. Public Information and Outreach – ACCWP #68 - DCB	ii. Implementation level	Delete
C.7.– ACCWP #69 - DCB	iii. Reporting	C.2: Report on implementation of the program once per permit term. C.3: Confirm that SD marking is verified prior to acceptance.

Table 2:
ACCWP MRP 2 Proposed Public Outreach/C.7. Revisions

MRP Provision	Current MRP Requirement	MRP 2.0 Update(s)
C.7.b. Advertising Campaigns – ACCWP #70 - DCB	i. Task Description – Permittees shall participate in or contribute to advertising campaigns on trash/litter in waterways and pesticides with the goal of significantly increasing overall awareness of stormwater runoff pollution prevention messages and behavior changes in target audience.	"i. Task Description – Permittees shall participate in or contribute to outreach campaigns with the goal of significantly increasing overall awareness of stormwater runoff pollution prevention messages and behavior changes in target audience."
C.7.b. Advertising Campaigns – ACCWP #71 - DCB	ii. Implementation Level (1) Target a broad audience with two separate advertising campaigns, one focused on reducing trash/litter in waterways and one focused on reducing the impact of urban pesticides. The advertising campaigns may be coordinated regionally or county-wide. Permittees shall conduct a pre-campaign survey and a post-campaign survey to identify and quantify the audiences' knowledge, trends, and attitudes and/or practices; and to measure the overall population's awareness of the messages and behavior changes achieved by the two.	Permittees shall develop and implement an Outreach Plan (may be developed at the countywide or regional level) designed to meet the goals of C.7.b.i. The Plan shall include advertising, social media, media relations, community involvement/watershed stewardship, and participation in outreach events. The Plan will be implemented at the local, countywide and/or regional level.
C.7.b. Advertising Campaigns – ACCWP #72 - DCB	iii. Reporting.	Delete existing reporting requirements. Insert: Permittees shall report on the local, countywide, and regional implementation of the Outreach Plan in each annual report. At least once during the Permit term, Permittees will assess effectiveness of Outreach Plan implementation.
C.7.c. Media Relations – ACCWP #73 - DCB	i. Task Description – Permittees shall participate in or contribute to a media relations campaign. Maximize use of free media/media coverage with the objective of significantly increasing the overall awareness of stormwater pollution prevention messages and associated behavior change in target audiences, and to achieve public goals.	Delete: covered under C.7.b.

Table 2:
ACCWP MRP 2 Proposed Public Outreach/C.7. Revisions

MRP Provision	Current MRP Requirement	MRP 2.0 Update(s)
C.7.d. Stormwater Point of Contact– ACCWP #74 - DCB	i. Task Description – Permittees shall individually or collectively create and maintain a point of contact, e.g., phone number or website, to provide the public with information on watershed characteristics and stormwater pollution prevention alternatives.	Delete. Spill and complaint response covered under C.5.
C.7.e. Public Outreach Events – ACCWP #75 - DCB	i. Task Description – Participate in and/or host events such as fairs, shows, workshops, (e.g., community events, street fairs, and farmers' markets), to reach a broad spectrum of the community with both general and specific stormwater runoff pollution prevention messages. Pollution prevention messages shall include encouraging residents to (1) wash cars at commercial car washing facilities, (2) use minimal detergent when washing cars, and (3) divert the car washing runoff to landscaped area.	Participate in and/or host events such as fairs, shows, workshops, (e.g., community events, street fairs, and farmers' markets), to reach a broad spectrum of the community with both general and specific stormwater runoff pollution prevention messages. Require planned effort to be included in the C.7.b. Outreach Plan. Minimum Events: Less than 100,000 = 1 100,000 to 250,000 = 2 Greater than 250,000 = 3
C.7.f. Watershed Stewardship collaborative efforts. – ACCWP #76 - DCB	. Task Description – Permittees shall individually or collectively encourage and support watershed stewardship collaborative efforts of community groups such as the Contra Costa Watershed Forum, the Santa Clara Basin Watershed Management Initiative, "friends of creek" groups, and other organizations that benefit the health of the watershed such as the Bay-Friendly Landscaping and Gardening Coalition. If no such organizations exist, encourage and support development of grassroots watershed groups or engagement of an existing group, such as a neighborhood association, in watershed stewardship activities. Coordinate with existing groups to further stewardship efforts.	Delete. Covered under C.7.b. and C.7.g

Table 2:
ACCWP MRP 2 Proposed Public Outreach/C.7. Revisions

MRP Provision	Current MRP Requirement	MRP 2.0 Update(s)
C.7.g. Citizen involvement / Watershed Stewardship– ACCWP #77a & #77b - DCB	i. Task Description – Permittees shall individually or collectively, support citizen involvement events, which provide the opportunity for citizens to directly participate in water quality and aquatic habitat improvement, such as creek/shore clean-ups, adopt-an-inlet/creek/beach programs, volunteer monitoring, service learning activities such as storm drain inlet marking, community riparian restoration activities, community grants, other participation and/or host volunteer activities.	Combine with C.7.f. Require planned effort to be included in the C.7.b. Outreach Plan. Minimum Events: Less than 100,000 = 1 100,000 to 250,000 = 2 Greater than 250,000 = 3
C.7.h. School- Age Children Outreach– ACCWP #78 - DCB	i. Task Description – Permittees shall individually or collectively implement outreach activities designed to increase awareness of stormwater and/or watershed message(s) in school-age children (K through 12). ii. Implementation Level – Implement annually and demonstrate effectiveness of efforts through assessment. iii. Reporting – In each Annual Report, each Permittee shall state the level of effort, spectrum of children reached, and methods used, and provide an evaluation of the effectiveness of these efforts.	Leave as is.
C.7.i. Outreach to Municipal Officials– ACCWP #79 - DCB	i. Task Description – Permittees shall conduct outreach to municipal officials. One alternative means of accomplishing this is through the use of the Nonpoint Education for Municipal Officials program (NEMO) to significantly increase overall awareness of stormwater and/or watershed message(s) among regional municipal officials.	Delete.

Initial Response to Issues raised at July 8th Water Board Hearing

C.10 - Impact of Public Outreach – ACCWP #80 - DCB	Public outreach can have a long-term impact on behavior. As Board Member Lefkovits mentioned, those who grew up with him still remember Smokey the Bear. ACCWP supports excellent environmental education programs for various levels of K-12 students: (1) Caterpillar Puppets: Grades K-3; (2) Storm Drain Rangers: Grades 4-5; and (3) Earth Team Zero Litter Project: High School. These programs can have an impact around the schools, but more importantly can have a long-term impact on students' attitude and behavior. A few examples of students' recent program-related artwork is attached. These programs would be happy to give a short 10-15 minute presentation at upcoming Board meetings if you like. When you see these programs you can't help but be inspired and believe that they have a long-term impact. **These programs should be encouraged by being recognized as part of a trash reduction strategy.**
C.10 - Alternative Compliance Approaches ACCWP #81 - DCB	Board Members Lefkovits and Kissinger both raised the issue of the difficulty we have with measuring trash reductions. Board Member Lefkovits made the comment that there are things we think are valuable, but they are difficult to measure, and Board Member Kissinger remarked that we are good at end-of-pipe chemical measurements but not good at measuring trash reductions. Board member Kissinger suggested that alternative approaches to compliance were needed. ACCWP agrees and would appreciate the opportunity to develop alternative approaches through discussions with Water Board staff and or Water Board members.
C.10 - Predictability – ACCWP #82 - DCB	Board Member Kissinger raised the issue of the need for predictability. Board Member Lefkovits raised a similar issue of the lack of successful experience from other locations and the need to take a step back to evaluate BMPs. ACCWP agrees that more consideration is needed prior to moving forward with aggressive compliance targets. As an example, the staff presentation mentioned several best management actions Permittees could implement: increased street sweeping, especially to the curb; solar belly trash compactors; and volunteer cleanups. While these are all useful, they require significant resources and there is no guarantee that they will result in compliance with the Permit. Additional time is needed to come to agreement on how compliance can be achieved.
C.10 - Trash Challenged Communities – ACCWP #83 - DCB	The Permit should provide special consideration to trash challenged communities. The date for accomplishing a 70% reduction should be extended to 2020. Even with the extension, some communities will not be able to meet the deadline. In the MRP Steering Committee meetings, WB staff stated that special consideration would be given to "trash impacted" communities. The Draft MRP does not provide that consideration. The Permit should be revised to provide special consideration to trash challenged communities.

C.10 -– K-12 Schools ACCWP #84 - DCB	K-12 Schools should be covered under the Phase II stormwater permit. Schools are often high trash-generation properties. Local jurisdictions have limited authority over schools. Some schools/districts are reluctant to host anti-litter education programs. The Water Board has the authority to have Region 2 K-12 schools covered under the Phase II stormwater permit. The Water Board should require at least litter reduction and anti-litter education under Phase II permits for K-12 schools.
C.10 -– BART ACCWP #85 - DCB	The WB should increase its regulatory oversight of BART under Phase II to ensure BART addresses litter at its stations and along its right-of-way. BART property is a significant source of litter. Jurisdictions have limited authority over BART. BART is covered already under the Phase II stormwater permit. The Water Board WB should require BART to increase its litter reduction efforts.
C.10 - Caltrans – ACCWP #86 - DCB	The Water Board should increase its regulatory oversight of Caltrans to ensure Caltrans addresses litter at along its right-of-way. Caltrans property is a significant source of litter. Local jurisdictions have limited authority over Caltrans property. Caltrans is covered under a statewide stormwater permit. The Water Board should require Caltrans to implement increased litter reduction activities.

Law Office of
Gary J. Grimm

2390 Vine Street
Berkeley, CA 94708
Telephone: (510) 848-4140
Facsimile: (510) 848-4164
Email: ggrimm@garygrimmlaw.com

Tom

July 10, 2015

Submitted Via email to: mrp.reissuance@waterboards.ca.gov

TO: Bruce Wolfe, Executive Officer
Attn: Dale Bowyer
California Regional Water Quality Control Board,
San Francisco Bay Region
1515 Clay Street, Suite 1400
Oakland, CA 94612

FROM: Gary J. Grimm

RE: Tentative Order for the Municipal Regional Stormwater NPDES Permit for Discharges from Municipal Phase I Permittees
Public Comment Submission on the Tentative Order

These comments are submitted on behalf of the Alameda Countywide Clean Water Program ("ACCWP") and its member agency Permittees.[1] The comments are intended to address legal and regulatory concerns relating to the Tentative Order for the Municipal Regional Stormwater NPDES Permit ("MRP") and accompanying documents (including Fact Sheet) for reissuance of the Municipal Regional Stormwater NPDES Permit as released for public comment on May 11, 2015.[2]

Introductory Comments

The ACCWP and its member agency Permittees are generally supportive of the objective of effectively addressing pollutant discharges in stormwater in a cost-effective manner so

[1] The Alameda Countywide Clean Water Program is composed of 17 cities and county entities in Alameda County including the Cities of Alameda, Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Newark, Oakland, Piedmont, Pleasanton, San Leandro, and Union City, Alameda County (for the unincorporated area), Alameda County Flood Control and Water Conservation District and Zone 7 of the Alameda County Flood Control and Water Conservation District. These entities each have jurisdiction over and/or maintenance responsibility for their respective municipal separate storm drain systems and/or watercourses in Alameda County.

[2] We also support the legal comments being submitted by Robert Falk on behalf of the SCVURPPP.

as to maintain and improve the quality of waters in the San Francisco Bay Region. This support and commitment has been demonstrated by Permittee efforts and accomplishments over the course of the existing and previous MS4 stormwater permits and the testimony provided in the Water Board workshop hearings. This support and commitment continues in light of significant challenges, both technical and financial, that it faces in this next permitting phase of the MRP as set forth in the Tentative Order. However, it will be necessary for the Water Board to favorably and successfully resolve the ACCWP, Permittee, and legal/regulatory comments and issues raised for this continued commitment to be fully and effectively implemented.

Finally, we are appreciative of the collaborative process involving Water Board staff that has taken place and continues to take place in this permitting process, including issuance of the administrative draft, the steering committee meetings, and the many meetings and discussions that have occurred in a cooperative effort with the MS4s, the environmental community, and other parties involved and affected by the issuance of this NPDES permit.

C.1. and C.14. – ACCWP Legal #1 – STL

Formatted: Font: (Default) Times New Roman, 12 pt, Bold

COMMENT 1 - Provision C.1/C.14, Issue Relating to Bacterial Controls/Pathogen Indicators

Provision C.1 requires compliance with discharge prohibitions and receiving water limitations. This Provision provides that if exceedances of water quality standards persist in receiving waters, implementation of additional procedures is required. However, the additional procedures are not required for exceedances for water quality standards for pesticides, trash, mercury, PCBs, and bacteria that are managed pursuant to Provisions C.9 – C.14.

While there are stand-alone provisions in the Tentative Order for pesticides, trash mercury and PCBs, none exists for bacteria. We agree with and support the intention of this approach as set forth in Provision C.1; however, we note that the bacteria control measures set forth in Provision C.14 currently relate only to the City of Pacifica and San Mateo County Fecal Indicator Bacteria Controls. The exception stated in C.1 for bacteria controls should be clarified in Provision C.14 so as to extend to all Permittees regulated by the permit that effectively implement and manage bacteria controls measures as set forth in Provision C.8.d.vi. for Pathogen Indicators.

Recommended Action: In Provision C.1, end the second sentence immediately after "Receiving Water Limitations B.1 and B.2" which would delete the language "for the pollutants in receiving waters identified in the provisions." In addition, include a statement in Provision C.14 that states that for all receiving waters other than San Pedro Creek and Pacific State beach described in Table 14.1, Permittees are required to comply with the monitoring and follow-up requirements set forth in Provision C.8.d.vi.

C.1. – ACCWP Legal #2 – STL

COMMENT 2 - Provision C.1, Alternative Compliance Pathways

The State Water Board recently has adopted Order No.WQ 2015-0075. In that Order, the State Board directed that upon issuance/reissuance of Phase I MS4 stormwater permits, the regional boards should consider an alternative compliance approach for receiving water limitation compliance as described in the Order. There is no reference to this Order in Provision C.1 or the findings of the Tentative Order. The only partial reference to alternative compliance pathways considerations is in the Fact Sheet pp. A-22, but reference is not specifically made to the Order.

This is not sufficient. The Provision C.1 alternative compliance relationship to Prohibition A.2 and Receiving Water Limitations B.1 & B.2 that relates to alternative compliance needs to be clarified and strengthened. It is critical to Permittees that they not face the threat of resource-draining enforcement/litigation because the only reference in the permit adoption process is not specifically contained in the findings or provisions of the permit itself, but is only a partial reference in the Fact Sheet.

Recommended Action: Finding 11 should be supplemented to acknowledge the precedent of this State Board Order, and expressly state that that, consistent with guiding principles of the State Order, Provisions C.1 and C.9-14 are intended to provide the co-permittees with an alternative compliance pathway relative to Discharge Prohibition A.2 and Receiving Water Limitations B.1 & B.2 with respect to pesticides, trash, mercury, polychlorinated biphenyls, copper and bacteria.

C.3.b.i. – ACCWP Legal #3 – STL

COMMENT 3 - Provision C.3.b.i, previously approved projects

The Second paragraph of Provision C.3.b.i relates to previously approved Regulated Projects, and requires that any Regulated Project that was approved with no Provision C.3 stormwater treatment requirements under a previous MS4 permit, and that has not begun construction by the effective date of this permit, must fully comply with the C.3.c. & d. requirements. .

This deletion of the requirement exemption from that described in the existing MRP is unacceptable to the co-permittees. First, it should be noted that there are very few of these projects remaining that will go forward. In addition, as these projects may have legally vested rights to proceed, they would be under no legal obligation to comply with additional directives of the municipality relating to C.3 requirements, thus, placing the municipalities in a very awkward position and raises significant conflicts for the municipalities.

Recommended Action: This language should be deleted from the Tentative Order, and the language of the existing MRP should be retained in the Tentative Order.

C.12.a.ii.(4) – ACCWP Legal #4 – STL

COMMENT 4 - Provision C.12.a.ii.(4) third paragraph, Countywide Urban Runoff Programs responsibility

This Provision requires Permittees to implement control measures to achieve county-specific load reduction criteria set forth in Table 12.1. However, the first sentence of the third paragraph of Provision C.12.a.ii.(4) provides that the Countywide Urban Runoff Programs are responsible for the specific portions of the Permit-wide load reduction shown in Table 12.1. The Programs are not waste dischargers under the permit, thus, this statement regarding responsibility of the Programs is inappropriate.

The Permittee compliance paragraphs that follow relating to Table 12.1 provide a confusing and unclear compliance pathway for Permittees. Furthermore, the population based default lacks a nexus to the potential for PCB load reduction in that different co-permittee jurisdictions in that land area and industrial development often have little relation to population in that area. This is further discussed in the ACCWP comments.

Recommended Action: The third paragraph of Provision C.12.a.ii.(4) should be deleted.

COMMENT 5 - Provision C.11.c & C.12.c, Imposition of Mercury and PCB Load Reduction Requirements Over the Final Three Years of the Permit Term

C.1.c. and C.12.c. – ACCWP Legal #5a – STL

Provisions C.11 & C.12 impose requirements for these legacy pollutants already in the Bay system that will be extremely challenging to implement, both from a technical and fiscal perspective. This has been emphasized by Permittees in the Board workshop hearings.

Provisions C.11.c. & C.12.c require Permittees to implement green infrastructure projects during the term of the permit in order to achieve PCBs and Mercury load reductions. These load reductions of 120 grams/year for PCBs and 48 grams/year for Mercury shall be achieved over the last three years of the permit. The Provisions require implementation of sufficient green infrastructure projects to achieve the county-specific load reduction performance criteria shown in Tables 11.1 & 12.2. The intention and description in the Tentative Order of these load reduction performance criteria are ambiguous and vague. This language is easy to misinterpret placing the MS4s at risk in regulatory/litigation enforcement actions.

The co-permittees lack clear paths to compliance and sufficient controls have not been provided in this permit to assure that numerically denominated quotas of mercury and PCB load reductions will be realized in each of the last three years of the permit. To now connect Green Infrastructure to PCB and mercury load reductions, when there is little technical basis for predicted reductions is legally inappropriate.

Permitees lack sufficient control to assure that numerically denominated quotas of mercury and PCB load reductions will be realized in each of the last three years of the permit, and as currently stated, these green infrastructure requirements are contrary to the Basin Plan - and this remains the case regardless of whether such quotas are defined on an area-wide, county-level, or proportionate Permittee specific basis.

C.1.c. and C.12.c. – ACCWP Legal #5b – STL

Finally, and of significant importance, the State Board has repeatedly found that numeric effluent limitations have not yet proved feasible for MS4 dischargers[3]

Recommended Action: It is essential that it be made clear that these projected load reductions over the last three years of the permit and the performance criteria of Tables 11.1 and 12.1 are not narrative or numeric effluent limitations, but are goals or at most, Numeric Action Levels for load reduction in the design and implementation of green infrastructure projects.

General – ACCWP Legal #6 – STL

COMMENT 6 – Unfunded State Mandates

Many provisions of the Tentative Order are more stringent than required by federal law and constitute unfunded state mandates in that they impose new programs or higher levels of service on the co-permittees, and therefore will violate Article XIIIB, Section 6, of the California Constitution.[4]

The Tentative Order does not contain sufficient findings, nor does the evidence in the record support the Regional Board's conclusion in the Fact Sheet that the permit does not require actions beyond the MEP.[5] Given the disparity of resources and heterogeneous nature of the co-permittees, blanket evidence and findings as discussed in the Fact Sheet purporting to apply to all permittees (or from Southern California) cannot suffice. If the

[3] As an example, the State Water Board's expert input on this subject concluded that numeric effluent limitations are not yet feasible for municipal stormwater. 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). The State Water Board has subsequently found that this remains the case even for non-municipal stormwater discharges and, accordingly, it deleted NELs from the Construction Storm Water General Permit Order No. 2009-0009-DWQ and even, more recently, from the Industrial Storm Water General Permit (Order No. 2014-0057-DWQ).

[4] The Alameda Countywide Clean Water Program and its member agencies reserve all their rights to pursue unfunded mandate challenges to a reissued MRP under applicable law, including as subject to the new U.S. EPA Waters of the United States rule soon to be codified in federal regulations, and as may be further clarified by the California Supreme Court. They also wish to make it absolutely clear that the record indicates that they have not waived such rights, including by volunteering through their comments, prior suggestions, previous actions, permit re-applications, or their cooperation and negotiations with the Water Board's staff, to be deemed to have voluntarily accepted any of the new program or higher level of service requirements contained in the T.O., including without limitation Provisions C.3.c.i.(2)(b), C.3.i, CC.3.j, C.8, C.10.a.i., C.10.a.ii.b, C.10.b.i.a and b, C.10.b.ii, C.10.b.v, C.11.c & d, C.12.c., C.12.d, C.12.f.

[5] We object to the incorporation of the Fact Sheet into the permit by reference. We believe that the Fact Sheet is more appropriately considered as background information relating to contents of the Tentative Order. The Fact Sheet should not be made part of the findings of the permit. See 40 CFR §§ 124.6, 124.8.

Regional Board claims the right to make this determination, it at least has the obligation to provide an adequate record and findings to support its determination.

The California Supreme Court is currently considering the case of Department of Finance, et al. v. Commission on State Mandates/County of Los Angeles, et al., Case No. S214855, which will clarify many issues on this subject including that jurisdiction to determine what aspects of the Tentative Order constitute unfunded state mandates properly rests with the Commission on State Mandates and not with the State's Water Boards.

General – ACCWP Legal #7 – STL

COMMENT 7 – Restrictions on Co-Permittees to Fund Actions Required by the Tentative Order.

As Permittee testimony at the workshop hearings have indicated, MS4s are faced with significantly increased costs to local government associated with more stringent requirements anticipated by the provisions of the Tentative Order. Many other commentors have noted and described these consequences in their written responses as well to the Water Board. Consequently, to avoid contentious advocacy proceedings that may consume large amounts of resources on detailed administrative appeals and litigation that could instead be spent on water quality improvement, the Tentative Order should be revised in a manner reflecting consensus with Bay Area local governments on priorities and realistic implementation timetables (which in some cases may have to be phased into future permit terms) and/or the relevant requirements must be conditioned on the receipt of State funding guaranteed to help the municipalities staff and finance their implementation.

In addition, Permittees are significantly restricted in their ability to increase fees for stormwater improvements and control by the provisions of Proposition 218. In November 1996, California voters adopted Proposition 218, the Right to Vote on Taxes Act, which added articles XIII C &D to the California Constitution. These constitutional provisions specify significant restrictions and requirements for assessments, fees, and charges that local governments impose on real property or on persons as an incident of property ownership.

As a general rule, it is not possible to create a new or increase an existing stormwater-specific fee without complying with Proposition 218 which, with the exception of wastewater, refuse, and water service, in some cases requires voter approval. The possibility of receiving grant funding is problematic because it entails expense, and then, is not guaranteed. Limited grant funding is available and applying for grants can be very time consuming - many costs are not eligible for reimbursement, local funding is often required; the applicant must advance funds; and there is no guarantee of receiving a grant. At the same time rate payer and political sensitivity has increase with regard to fees. With so little funding available from grants and general revenues constrained by competing service demands, it is increasingly difficult to fund new or increased stormwater programs. Legislative efforts that would lead to modification of Proposition 218 to exempt fees for stormwater control have not been successful.

Formatted: Indent: Left: 0.08", Right: -0.01", Line spacing: single

Recommended Action: Carefully consider the significant financial constraints facing Permittees before imposing requirements that would necessitate significant and additional expenditures of funds by local agencies.

Thank you for the opportunity to submit these comments on behalf of the Alameda Countywide Clean Water Program and its Permittee member agencies. We look forward to continuing to work with the Water Board staff to trying to cooperatively resolve or at least narrow the concerns we have raised so that future legal challenges can be avoided.

Sincerely,

Gary J. Grimm

Cc: Tom Mumley
ACCWP Management Committee
Jim Scanlin

Alameda Countywide Clean Water Program

Contra Costa Clean Water Program

Fairfield-Suisun Urban Runoff Management Program

Marin County Stormwater Pollution Prevention Program

Napa County Stormwater Pollution Prevention Program

San Mateo Countywide Water Pollution Prevention Program

Santa Clara Valley Urban Runoff Pollution Prevention Program

Sonoma County Water Agency

Vallejo Sanitation and Flood Control District

B A S M A A

Bay Area Stormwater Management Agencies Association

P.O. Box 2385

Menlo Park, CA 94026

510.622.2326

info@basmaa.org

July 10, 2015

Bruce Wolfe, Executive Officer
California Regional Water Quality Control Board, San Francisco Bay Region
1515 Clay Street, Suite 1400
Oakland, CA 94612

Subject: Municipal Regional Stormwater Permit–Tentative Order

Dear Mr. Wolfe:

The purpose of this correspondence is to submit the Bay Area Stormwater Management Agencies Association's ("BASMAA's")[1] written comments on the Regional Water Board staff's Tentative Order for the San Francisco Bay Region for the Municipal Regional Stormwater Permit ("Draft MRP"), dated May 11, 2015. These written comments follow up our testimony at the June 10 and July 8 Board Meetings. BASMAA is limiting the scope of its comments to a few major issues at a conceptual level – leaving detailed comments to the Programs and Permittees.

On behalf of the 76 BASMAA member agencies covered by the current MRP ("Permittees"), thank you for this opportunity to comment on the Draft MRP. Thank you to your staff for the process used to reach this point in the development of the Draft MRP. With your staff, we created a Steering Committee comprising high-level managers (e.g., Public Works Directors) and stormwater staff from the local agencies and the Water Board to guide the permit development process, including setting priorities and focusing on issues of most importance to stormwater quality. That has allowed us to get to this point in the process in less than two years when it took much longer in the last permit reissuance process.

Thank you also to staff for their support of our efforts and others' efforts to secure key grants either directly or through others to help implement permit provisions:

Grant Project	Funder	Issue	Amount
Bay Area-wide Trash Capture Demonstration Project	SWRCB-ABAG	Trash	$5,000,000
Clean Watersheds for a Clean Bay	EPA	PCBs/Hg	$5,000,000
IPM Advocates for Retail Stores	DPR	Pesticides	$170,000
Tracking California's Trash	SWRCB	Trash	$870,000
Got Ants	DPR-ABAG	Pesticides	$99,208
Greener Pesticides for Cleaner Waterways	EPA-ABAG	Pesticides	$42,000
IPM Focus on Multi-Unit Housing	DPR	Pesticides	$199,927
Urban Greening Bay Area	EPA-ABAG	Green Infr	$200,000

[1] BASMAA is a 501(c)(3) non-profit organization comprised of the municipal stormwater Programs in the San Francisco Bay Area representing 98 agencies, including 84 cities, 7 counties, and several special districts. BASMAA focuses on regional challenges and opportunities to improve the quality of stormwater flowing to our local creeks, the Delta, San Francisco Bay, and the Pacific Ocean. The Municipal Regional Permit covers 76 of BASMAA's 98 member agencies.

Comments

General Comment – BASMAA #1 – KHL

Need to Prioritize

We have accomplished much with these grants and the information gained through grants has helped inform our next steps in improving stormwater quality. However, the availability, eligibility, and securing of grants is highly uncertain and not something a public agency can depend on. And looking forward, we are not seeing the same amount of grant funding being made available for controlling trash, PCBs, and mercury (Hg) that was available during the current MRP term.

Additionally, given the effects of Proposition 218 on the ability to fund stormwater programs and the ongoing erosion of purchasing power caused by inflation, municipal stormwater budgets are effectively shrinking or at best remaining level. To counter these effects, stormwater program managers need to be able to create and run efficient and sustainable stormwater programs. A stormwater program is a direct reflection of associated permit mandates. Therefore, if we are to have any hope of such programs, we need a smart and efficient stormwater permit. The ability to prioritize is a basic tenet of management and a critical tool for creating and running an efficient and sustainable stormwater program.

So far in the Draft MRP development process, while we appreciate the focus on issues of most importance for stormwater quality, there has not been a concomitant reduction in requirements that likely have little importance or effect on stormwater quality. For the high priority issues, like reduction in pollutant of concern loads, staff is proposing some major new requirements. The Permittees want to spend most of their effort on high priority issues but cannot afford to do so without some relief on medium and low priority items.

C.12 – PCBs – BASMAA #2 -- KHL

Additionally, at the July 8, 2015 Regional Water Board hearing, some Board members acknowledged that given the very high costs and difficulties to address PCBs, trash controls should be given priority during the permit term. This is also consistent with the message from the State Water Resources Control Board via the recently adopted trash amendments. Based on this feedback from Regional Water Board members, requirements currently included in the PCBs provision should be streamlined and the schedule for implementation of controls should extended to allow Permittees to focus on trash controls during this permit term.

General Comment – BASMAA #3 -- KHL

Recommended Revisions:

- *As agreed at the Steering Committee, the Draft MRP should be reviewed to identify for potential removal provisions that likely have little effect on stormwater quality.*
- *Streamline requirements for lower priority pollutants of concern and expand associated implementation schedules to allow Permittees to focus on trash, the highest priority water quality concern at this time.*

The Steering Committee has determined the high priority issues and their corresponding permit provisions are:

- C.3.j – Green Infrastructure Planning and Implementation
- C.10 – Trash Load Reduction
- C.12 – PCBs Controls (C.11 Mercury Controls)

For each of the high priority provisions, the major concerns and recommended revisions follow.

C.3.j – Green Infrastructure Planning and Implementation

C.3.j – Green Infrastructure – BASMAA #4 -- KHL

Ensure major, new Green Infrastructure Program is well planned

In general, this sub-provision continues to be the most challenging and most uncertain portion of Provision C.3 in terms of what will constitute compliance. Although we generally support a major move to green infrastructure (GI) over the next few decades, such a move would be a significant change to how urban and suburban landscapes and infrastructure have been designed, built, and managed in California for the last 160 years. And given such a change would be effected primarily by local governments (as opposed to state or federal), it is vital that local governments (i.e., Permittees) have sufficient opportunity to research, plan, set, and implement this new direction. If Permittees do not have sufficient time and opportunity in the early stages of research and development, it is entirely possible that a new direction would be set that is slightly off target. Such a small error at the formative stage would be magnified many times across the Bay Area and over time, likely result in wasteful and potentially even regretful actions. When it comes to designing and building a sustainable green infrastructure program for the Bay Area, let us measure twice and cut once.

Recommended Revisions:

- *Focus efforts during the next MRP term on planning and opportunistic implementation where feasible.*
- *Extend the timeframes for approval of the GI framework and submittal of the GI Plan.*
- *To avoid missing opportunities for early implementation, add language that would allow for consistent review of capital improvement program (CIP) projects for GI opportunities, based on specified criteria developed collectively by the Permittees, and allow sufficient time for development and implementation of the criteria.*

C.3.j – Green Infrastructure – BASMAA #5 -- KHL

Facilitate efficient and sustainable stormwater programs

Source identification and characterization data indicate mercury and PCBs are generally distributed widely across the urban landscape at relatively low concentrations. This appears to be particularly true for mercury but also generally true for PCBs, except for the occasional concentrated source (e.g., industrial facility that used PCBs). Setting aside source control best management practices (BMPs) that could be used for concentrated sources, the BMP for a pollutant of concern (POC) that is distributed across the landscape is a distributed BMP – i.e., green infrastructure. This is even truer for a POC like PCBs that is associated with small

particles of sediment. Treatment BMPs, like screens or filters, would be ineffective or infeasible for a POC associated with small particles, but an infiltration-based BMP, like green infrastructure, would be effective. And if that best management practice was being promoted and implemented anyway as part of a long-term strategy like the green infrastructure framework that will address myriad stormwater issues, including other pollutant problems and flow control, than the use of that BMP for PCBs becomes even more cost-effective and would make the stormwater program more efficient and sustainable. For these reasons, the language in section C.3.j needs to be more consistent with the expectations in Provisions C.11 and C.12.

Recommended Revisions:

- *Align the time intervals for green infrastructure planning with fiscal years, and make consistent with the time intervals for load reductions in the Basin Plan for mercury and PCBs (C.11/C.12).*
- *Align the timeframes for targets for amount of impervious surface retrofitted with the C.11/C.12 load reduction timeframes.*

C.10 – Trash Load Reduction

C.10 – Trash Load Reduction – BASMAA #6 -- KHL

Against all odds, facilitate success

Littering is probably our species' oldest polluting behavior. Whether it was the middens of our ancient ancestors or the trashed waterways highlighted just a generation ago by Pogo and Iron Eyes Cody (see attachments), litter or trash is the definition of an intractable problem – as was recognized by several Board Members in the July 8, 2015 Board hearing on the trash provision in the Draft MRP.

Since the beginning of time to-date, no super BMP or even regular BMP has been identified that will prevent or clean up the vast majority of litter or trash. There are just too many sources and pathways (see attachment). And every BMP has significant limitations, uncertainties, and/or long return-on-investment time scales. Treatment controls like full trash capture devices deal with only one of the four major pathways of trash to our waterways and are designed to miss trash smaller than 5 mm or flows above a certain size to avoid blowout or flooding. The performances of source controls like street sweeping or education are highly situation-specific and depend on a number of conditions being met (e.g., access to curb, slow sweeper speeds, actual behavior change) to achieve significant trash removal. Because of their economic and political impacts, source reduction BMPs (i.e., product substitutions/bans, litter fees) often take years to develop and implement before a return on that investment in the form of reduced trash generation can be detected.

C.10 – Trash Load Reduction – BASMAA #7 -- KHL

On the issue of detection, of monitoring to identify a change, stormwater is not wastewater. Monitoring wastewater to detect changes is easy compared to stormwater for the simple but fundamental reason that wastewater is a relatively consistent flow and stormwater, including the pollutants it contains, highly inconsistent. That is because unlike wastewater, which comes from a closed system with highly predictable and consistent sources of flow, stormwater comes from an open or natural system, with highly unpredictable and inconsistent flows. That unpredictability and inconsistency translates to high variability. High variability in the quantity and quality of the flow

means the data from measuring that flow is highly variable. High variability is the bane of statistics and makes detecting changes or trends very difficult because a real change is indiscernible from all the variability or noise in the data. The amount of variability in stormwater data is often as much as the average (e.g., average = 5 +/- 5). One way to reduce variability is to take more measurements – with more data the central tendency (e.g., average) starts to stick out from the less common noise. However, for highly variable data like stormwater, more data do not necessary mean cleaner data. More data are just as likely not to show a central tendency – making it no easier to detect a change.

C.10 – Trash Load Reduction – BASMAA #8 -- KHL

Given the intractable nature of our trash problem, the lack of sure-thing solutions that will essentially eliminate the problem, the inherent challenges in detecting differences in stormwater data even if we achieve them, and the severely limited resources of municipal stormwater programs, it is incumbent on the Regional Water Board to facilitate success by providing as much flexibility, time, and when available, support for resources as possible.

Recommended Revision:

- *To address the phenomena that as the percentage of load reduction increases, reductions become increasingly challenging (e.g., law of diminishing returns) and more time is therefore needed to find and implement sustainable control measures, extend the percent load reduction time schedules.*

C.10 – Trash Load Reduction – BASMAA #9 -- KHL

An ounce of prevention is worth a pound of cure

Source reduction or true source control is reducing or eliminating pollution, in this case litter or trash, at the source so it does not exist to come into contact with stormwater. In the stormwater quality profession, we have a few examples of source reduction and the results it can or is expected to achieve, including:

- Unleaded gasoline – The reduction of lead in gasoline by about 90% in the early 1980s cascaded through the environment and people over the next decade. By the early 1990s, there was about a 90% reduction of lead in the air, about a 90% reduction of lead-related lung disease, and about a 90% reduction in lead in stormwater.
- Diazinon (pesticide) phase-out – The phase-out of all residential uses of the pesticide diazinon, which was virtually ubiquitous in urban and suburban creeks resulted in diazinon being virtually undetectable in the creeks just 3-4 years later.
- Brake pad copper phase-out – The required reduction in use of copper in brake pads to 0.5% or less is expected to reduce copper in watersheds by 60% or more.
- Bifenthrin (pesticide) regulations – New regulations and labeling requirements are expected to reduce the amount of pyrethroid insecticides in urban stormwater runoff by 80-90%.

At the July 8, 2015 Regional Water Board hearing on the Draft MRP, Board Members heard documented success stories about source reduction of trash due to single-use plastic bags and expanded polystyrene (EPS) foam product bans. These source reduction efforts are best management practices in every sense of the term – at least as successful and proven as any other BMP, with numerically documented performance. Given this proven success and to reward the often significant investment that must be made and risks that must be taken before these source reduction BMPs come to fruition, the Regional Water Board should make an ounce of prevention worth a pound of cure.

Recommended Revisions:

- *Increase maximum percent reduction for source controls, with supporting evidence.*
- *Increase maximum percent for additional creek/shoreline cleanups.*
- *Omit maximum percent reduction value for direct discharge control program.*

C.12 – PCBs Controls (C.11 Mercury Controls)

Bay Area municipalities have made a great deal of progress over the past 15 years towards understanding the types of control measures that are most cost-effective in reducing PCBs discharges in stormwater. Although this evaluation of controls is ongoing, no controls identified to-date are particularly cost-effective, apart from the 1979 ban by USEPA on PCBs manufacture, import, export, and distribution in commerce in the United States. The ban represented effective "true source control" but came much too late to prevent the widespread distribution of PCBs into the urban landscape and the Bay. With further true source control generally not an option, the current challenges in addressing PCBs are not surprising.

C.12 – PCBs – BASMAA #10 – KHL

Provide clear and feasible pathway to compliance

There is a lack of clear and feasible pathway for Permittees to attain compliance with the load reduction requirements. Most key factors in meeting the mandated load reduction are uncertain and many are not within Permittees' control – making achievement of compliance uncertain.

These factors include:

- PCBs are legacy pollutants that are long-lived and ubiquitous but at generally very low concentrations, which makes traditional stormwater treatment (non-green infrastructure) expensive and likely ineffective.
- The Regional Water Board-recommended BMP (Manage PCB-containing Materials and Wastes During Building Demolition) is opportunistic and yet existence of opportunities is uncertain and dependent on factors not within Permittees' control (e.g., extent of source properties found, building demolition rates, redevelopment rates).
- There is no agreed-to accounting method to assess performance.

Despite all of these uncertain and uncontrollable factors – intractable problem, no clear solution (BMP), and no agreed-to measure of success – staff is proposing to commit Permittees to a specific regulatory performance level (Kg/year reduced) or "load reduction performance criteria". This is the antithesis of a clear and feasible pathway to compliance. Regional Water Board staff has acknowledged that load reduction performance criteria are not effluent limits. This should be made clear in the permit. PCBs load reduction performance criteria should be in the form of action levels, i.e., levels set at a typical performance level and which require action when the level is triggered or not met.

Regional Water Board members also noted at the July 8, 2015 hearing that the general approach in the permit is to require implementation of BMPs and pollutant controls, and that the requirements in the permit should be predictable and provide a clear/concise articulation of the path to compliance – all factors that are particularly relevant to crafting the PCBs-related requirements.

C.12 – PCBs – BASMAA #11 -- KHL

Recommended Revisions:

- *Replace the load reduction performance criteria with a Numeric Action Level (NAL).*
- *Base compliance upon implementing PCBs control programs designed to achieve a NAL, using an interim accounting method included in its entirety in the permit and applicable for at least the term of the permit, and taking specified actions if the NAL is triggered.*

C.12 – PCBs – BASMAA #12 -- KHL

Promote a strategy to manage PCB-containing materials and wastes during building demolition

Based on Bay Area sampling and similar sampling in other areas, there appears to be a large standing stock of PCBs in certain buildings in the Bay Area, sometimes at concentrations that would likely exceed California hazardous waste levels. There is also a potential health risk to workers (e.g., at a demolition site) or building occupants exposed to PCBs in building materials. These problems are common to urban areas throughout the country. We don't know whether or not PCBs in building materials is a significant water quality issue. However, addressing the various potential problems associated with PCBs in building materials appears to be a worthwhile and "no regrets" cause.

C.12 – PCBs – BASMAA #13 -- KHL

However, the various facets of this issue (i.e., water quality, human exposure at the site, and disposal) should be addressed holistically on a statewide or federal basis rather than focusing on water quality BMPs in the Bay Area only. Meeting the Tentative Order's three-year timeframe to develop a program to manage PCBs in building materials and wastes during demolition would likely require administration at the local level. This approach would result in highly inefficient use of scarce public funds and likely be ineffective at comprehensively addressing the problems. It would also likely result in inconsistent programs across the Bay Area and unintended consequences. The current situation is analogous to pesticides and pesticide-related toxicity in the early 2000s. In response to that situation, the Regional Water Board allowed the Permittees to research and develop a strategy and action plan to address the myriad elements and parties involved in the issue in a coherent and comprehensive way. That strategy formed the basis of the Regional Water Board's water quality attainment strategy and TMDL as well as the pesticide-related provisions in the municipal stormwater permits / MRP.

C.12 – PCBs – BASMAA #14 -- KHL

Recommended Revision:

- *Allow at a minimum the entire permit term for Permittees to work with the State, USEPA, the building industry, and other stakeholders to develop a comprehensive strategy and action plan.*

General Comment – BASMAA #15 -- KHL

In addition to the comments above, we attach and incorporate by reference the comments we provided on the Administrative Draft MRP on March 9, 2015; March 16, 2015; and March 27, 2015.

Thank you again for the opportunity to provide comments on the Draft MRP.

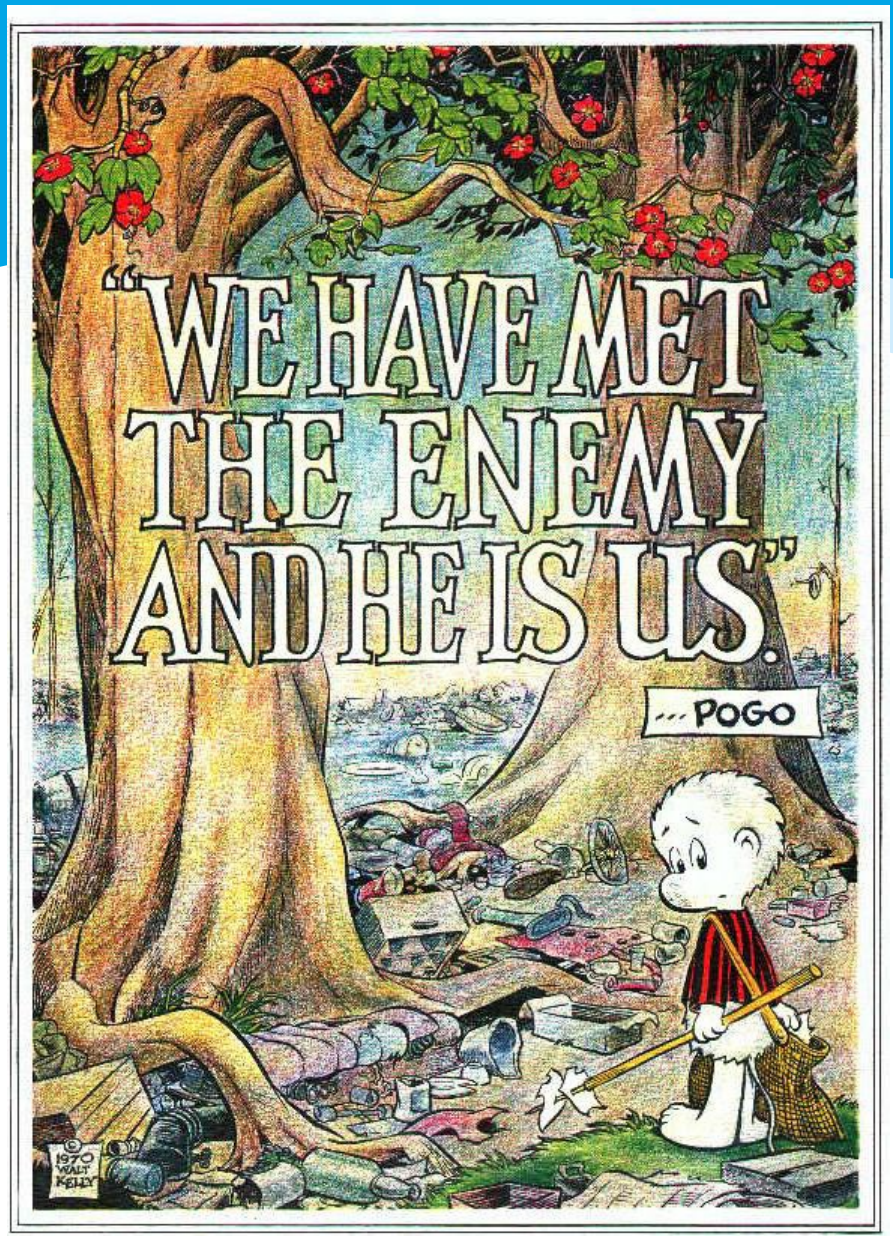
If you have any questions regarding these comments, please contact me or our Executive Director, Geoff Brosseau.

Sincerely,

Matthew Fabry, BASMAA Chair

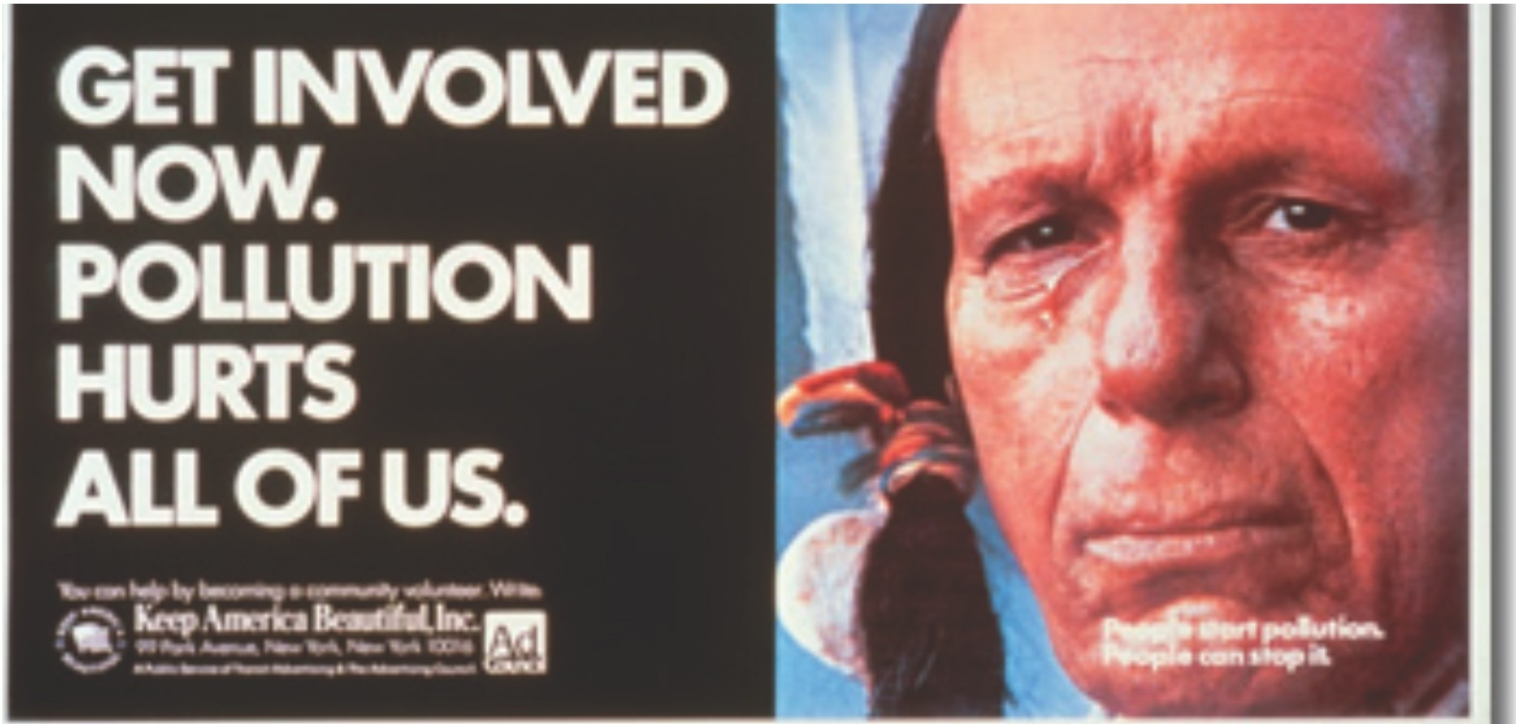
cc: Terry Young, Chair, San Francisco Bay Regional Water Board
Regional Water Board Members
Tom Mumley, Assistant Executive Officer, Regional Water Board
Keith Lichten, Chief – South Bay Watershed Management Division, Regional Water Board
Dale Bowyer, Section Leader – Southeast Bay Section, Regional Water Board
BASMAA Board of Directors

Attachments:
Pogo – First Earth Day Poster, Walt Kelly, 1970
Iron Eyes Cody – TV commercial, Keep America Beautiful, 1971
Trash Sources and Pathways to Urban Creeks, SCVURPPP
Comments files on Administrative Draft MRP submitted on March 9, 2015; March 16, 2015; and March 27, 2015 (17 files attached separately to transmittal email)



1st Earth Day poster
Walt Kelly, 1970

"People Start Litter, People Can Stop It"

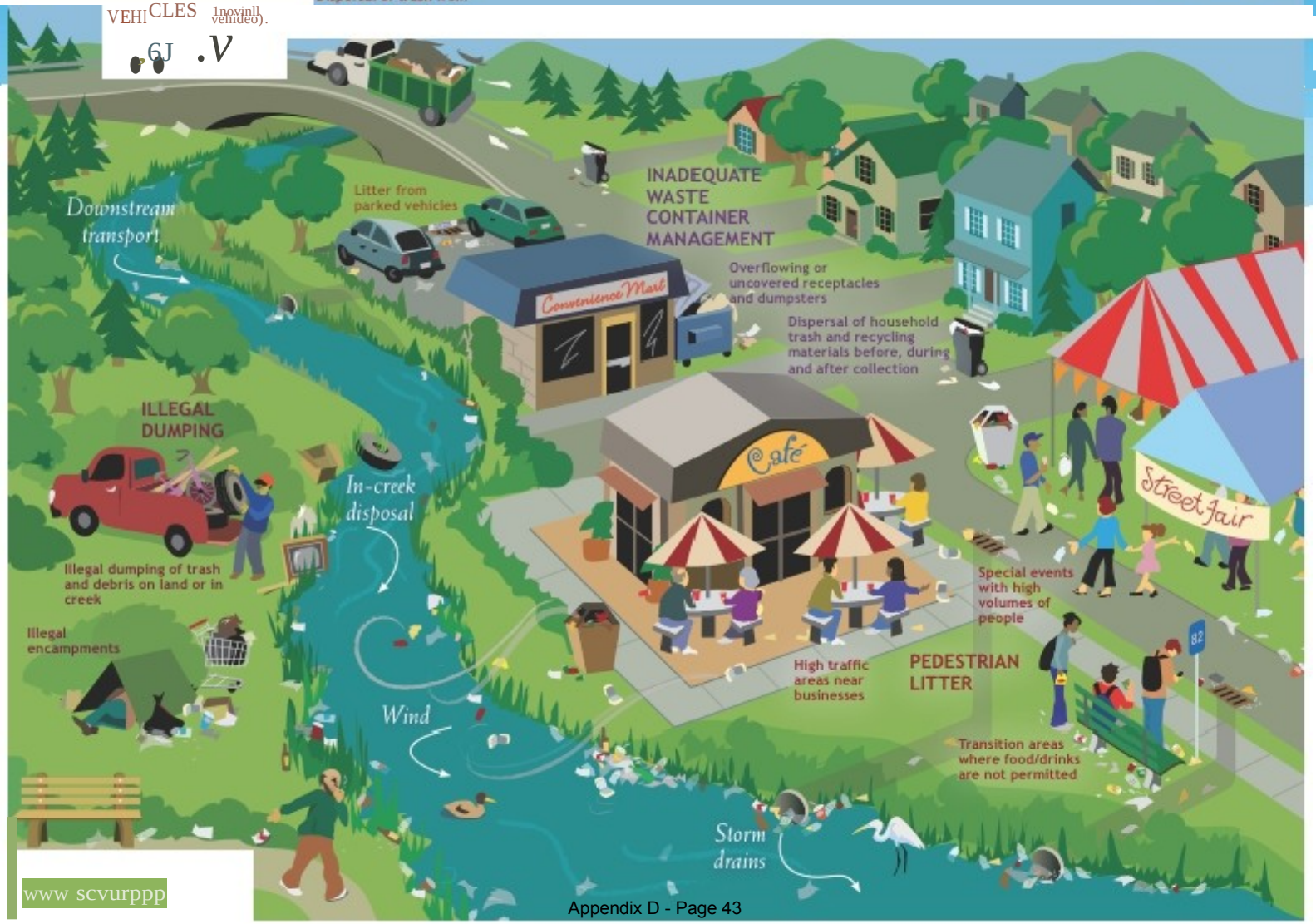


Iron Eyes Cody Keep America Beautiful,1971

Trash Sources and *Pathways* to Urban Creeks

Santa Clara Valley Urban Runoff Pollution Prevention Program

Dispersal of trash from



www scvurppp

July 10, 2015

Dale Bowyer
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612
mrp.reissuance@waterboards
.ca.gov

Re: Draft Municipal Regional Stormwater NPDES Permit

Dear Mr. Bowyer:

Thank you for the opportunity to review and comment on the draft Municipal Regional Stormwater NPDES Permit ("Draft MRP") for 76 municipalities and local agencies in Alameda, Contra Costa, Santa Clara, and San Mateo Counties and the cities of Fairfield, Suisun City, and Vallejo (collectively, the "Permittees"). Baykeeper has actively participated in the development and implementation of the existing municipal regional stormwater NPDES permit, Order R2-2009-0074 ("2009 Permit"), and has significant questions and concerns about the Draft MRP, as discussed in detail below.

C.1. Compliance with Discharge Prohibitions and Receiving Waters Limitations

C.1 – "Safe Harbor" Language – Baykeeper #1 – REL

Baykeeper is concerned with the addition of the following "safe harbor" language in section C.1 of the Draft MRP:

> Compliance with Provisions C.9 through C.14 of this Order, which prescribe requirements and compliance schedules for Permittees to manage their cause and contributions to violation of water quality standards or to prevent violation of water quality standards for pesticides, trash, mercury, polychlorinated biphenyls (PCBs), copper, and bacteria, shall constitute compliance with Receiving Water Limitations B.1 and B.2 for these pollutants in receiving waters identified in the provisions. Compliance with Provision C.10, which prescribes requirements and compliance schedules for Permittees to manage their discharges of trash, shall constitute compliance with Discharge Prohibitions A.2 for discharges of trash.

Baykeeper is strongly opposed to this new language, which is inconsistent with core requirements of the federal Clean Water Act ("CWA") requiring that an NPDES permit ensure compliance with the terms included in the permit. (*See* 33 U.S.C. § 1342(a).) In

particular, whereas the present permit requires strict compliance with the narrative and numeric receiving water standards covered by Receiving Water Limitations B.1 and B.2 and Discharge Prohibition A.2, the Draft MRP would effectively eliminate these standards for pollutants covered by sections C.9 through C.14, instead requiring only implementation of the programmatic elements required pursuant to those provisions. Because the ultimate effluent quality permitted for discharge under this permit may contain more pollutants than currently permitted, these provisions are less stringent that the effluent limitations contained in the prior permit, thereby requiring analysis under the anti-backsliding provision of the federal Clean Water Act. (33 U.S.C. § 1342(o)(1) ["a permit may not be renewed, reissued, or modified to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit"]; *see* 40 C.F.R. § 122.44(l)(1) ["when a permit is renewed or reissued, interim effluent limitations, standards or conditions must be at least as stringent as the final effluent limitations, standards, or conditions in the previous permit"].) At present, none of the exceptions to the CWA's anti-backsliding prohibition appear to apply. (33 U.S.C. § 1342(o)(2).) Moreover, as explicitly provided in the Clean Water Act, "[i]n no event may such a permit to discharge into waters be renewed, reissued, or modified to contain a less stringent effluent limitation if the implementation of such limitation would result in a violation of a water quality standard" established under the CWA. (33 U.S.C. § 1342(o)(3).)

C.1 – Compliance Schedules – Baykeeper #2 – REL

The Draft MRP references "compliance schedules" contained in permit sections C.9 through C.14, but is unclear exactly what the basis and scope of these compliance schedules are. If the Draft MRP proposes to incorporate "schedules of compliance" pursuant to 40 C.F.R. § 122.47, it is unclear why any of the pollutants covered by sections C.9 through C.14 should qualify for such a schedule of compliance. The Draft MRP does not propose any new receiving water limitations or discharge prohibitions for any of these pollutants, all of which are presently covered by the existing permit, and none of which are presently subject to any compliance schedules that we are aware of.

Lastly, we note specific concerns with the pollutants referenced in this new provision, which are discussed more fully in separate sections of this comment. For example, the language in Section C.1 appears to refer to water quality standards for bacteria relevant to all Permittees, but Section C.14 only contains control measures for the City of Pacifica and San Mateo County. Mercury, PCBs, and pesticide toxicity each have specific receiving water limits established by TMDL, and the Draft MRP should be revised to more clearly affirm that the TMDL limits must be complied with in the effluent discharged, and not simply through implementation of programmatic requirements. Lastly, the copper program requirements are important, but do not cover the full range of copper generating sources that may cause or contribute to water quality exceedences without additional controls or treatment.

C.2.f. Corporation Yard BMP Implementation

C.2 – Corporation Yard inspection Date – Baykeeper #3 – REL

The Draft MRP requires Permittees to inspect each corporation yard in their jurisdiction each year between September 1 and September 30 to ensure that best management practices

("BMPs") are fully implemented. This date range should be moved to earlier in the year for two reasons. First, it is not uncommon for the first rain event of the season to occur in the month of September, as happened in 2014. Second, the BMP inspection should be completed sufficiently far in advance of the "rainy season" to allow time for any BMPs determined to be insufficient or in disrepair to be remedied prior to the first rain event of the season. At the same time, we recognize that the inspection should occur as close to the rainy season as possible, to provide better information that BMPs are in working order during the wet season. Given these goals, we recommend a revision to move the BMP inspection period to between August 1 and August 15.

C.3. New Development and Redevelopment

A. Section C.3.b.ii.2-3 Is Ineffective to Meet Green Infrastructure-Related Goals.

C.3 – square footage threshold for new and redevelopment – Baykeeper #4 – REL

We ask the Board to reconsider the square footage threshold for new and redevelopment projects subject to source control through implementation of low impact development ("LID"). The current threshold of 10,000 ft^2 effectively ensures only the largest of new and redevelopment projects, or those projects outside the central urban core of the Bay Area, will be subject to stormwater management controls.

Moreover, the 10,000 ft^2 threshold does not meet the requirement that MS4 NPDES permits include controls to reduce the discharge of pollutants to the "maximum extent practicable" ("MEP"). (33 U.S.C. § 1342(p)(3)(B)(iii).) The proposed threshold is twice that of San Francisco's standard under their Stormwater Management Ordinance which has proven, since passage of the Ordinance in 2010, that a lower threshold standard is feasible in even the most urban areas of Region 2.[1] In addition, the Draft MRP incorporates a 5,000 $ft.^2$ threshold for "Special Land use Categories" (Draft MRP, C.3-3), indicating that the Regional Board has determined that a lower threshold is feasible.

The MEP standard "imposes a clear duty on the agency to fulfill the statutory command to the extent that it is feasible or possible." (*Defenders of Wildlife v. Babbitt*, 130 F. Supp. 2d 121, 131 (D.D.C. 2001); *Friends of Boundary Waters Wilderness v. Thomas*, 53 F.3d 881, 885 (8th Cir. 1995) ("feasible" means "physically possible"). One state hearing board has stated that "[MEP] means to the fullest degree technologically feasible for the protection of water quality, except where costs are wholly disproportionate to the potential benefits . . . ." (*North Carolina Wildlife Fed. Central Piedmont Group of the NC Sierra Club v. N.C. Division of Water Quality* (N.C.O.A.H. October 13, 2006) 2006 WL 3890348, Conclusions of Law 21-22.) The North Carolina board further found that the permits in question violated the MEP standard both because commenters highlighted measures that would reduce pollution more effectively than the permits' requirements and because other controls, such as infiltration measures, "would [also] reduce discharges more than the measures contained in the permits." (*Id.* at Conclusions of Law 19.)

Similarly, here, the San Francisco example shows that a 5,000 $ft.^2$ threshold is feasible and more effective at reducing pollution than the 10,000 $ft.^2$ threshold proposed in the Draft MRP. Therefore, Baykeeper requests that a 5,000 ft^2 threshold, which has been established for "Special Land Use Categories" (Section C.3.b.ii.1.) in the Draft MRP, be used for all new and redevelopment projects. In the absence of lower thresholds for implementation, the "goals for reducing the adverse water quality impacts of urbanization and urban runoff on receiving waters"

established pursuant to Section C.3.j., Green Infrastructure Planning and Implementation, will never be realized.

[1] City and County of San Francisco ordinance requiring the development and maintenance of stormwater management controls for specified activities that disturb 5,000 ft^2 or more of ground surface, *available at*: www.sfbos.org/ftp/uploadedfiles/bdsupvrs/ordinances10/o0083-10.pdf.

B. The Regional Board Should Develop Tools for Permittees to Determine Compliance with Section C.3.d.

C.3 – compliance tools for hydraulic design – Baykeeper #5 – REL

Volume- and flow-based hydraulic design standards presented in Section C.3.d.i. are presented as hydrologic and hydraulic standards, requiring expertise to conduct site-specific calculations. Baykeeper's experience is that in the absence of readily-available site-specific precipitation data, the regulated community either must hire consultants to conduct expensive analysis for generation of site-specific values, or make estimates based on information found on the internet. To ensure adequate oversight and consistent implementation, the Regional Board should prepare site-specific calculations of the 85th percentile storm runoff event, the 85th percentile hourly rainfall intensity, and information necessary to calculate the 50-year peak flow rate.

Comparable documentation, in the form of isohyetal maps to indicate local variations in precipitation, has been in place in Los Angeles since 2004, thus easing the requirements expected from engineers, consultants, and planners, most of whom are unqualified to verify the accuracy of the calculations.[2] Development of lookup tables and maps for the region entails a discrete level of effort by staff, which would serve the region for decades by easing permit requirements and ensuring consistent implementation of stormwater controls. If staff is unable to conduct such analysis, development of such tools by the Permittees should be included as a permit requirement.

C. Sections C.3.j and C.12.c Must Provide Additional Specificity to Attain TMDL Wasteload Allocations.

C.3 – More specification for green infrastructure plans – Baykeeper #6 – REL

Baykeeper applauds the Regional Board for requiring the completion of Green Infrastructure Plans by Permittees, though additional specifications are required to meet the stated objectives:

> The Plan is intended to serve as an implementation guide and reporting tool during this and subsequent Permit terms to provide reasonable assurance that urban runoff Total Maximum Daily Load (TMDL) wasteload allocations (e.g., for the San Francisco Bay mercury and PCBs TMDLs) will be met, and to set goals for reducing, over the long term, the adverse water quality impacts of urbanization and urban runoff on receiving waters.

In particular, Section C.3.j. (Green Infrastructure Program Plan Development) contains a number of requirements related to scheduling, map development, adoption of policies, and reporting – none of which relate to the implied goals of reducing mercury, PCBs, and other contaminants in receiving waters. This will undoubtedly result in high expenses related to generation of voluminous reports, for review by overwhelmed staff who are unable to provide adequate review. This has given rise to valid criticism from the

[2] Isohyetal maps for Los Angeles County are *available at*:

http://www.ladpw.org/wrd/publication/engineering/Final_Report-Probability_Analysis_of_85th_Percentile_24- hr_Rainfall1.pdf.

Permitees that no clear path to compliance exists with regard to this permit provision, or for the interrelated C.12.c. provision (Plan and Implement Green Infrastructure to reduce PCB loads).

We request that if the Regional Board is asking Permittees to reduce contaminant loading through Green Infrastructure, staff specify the location and design standards intended to achieve wasteload reductions. Alternatively, the Regional Board should follow pathways similar to those pursued in Region 4 (Los Angeles), to develop watershed management programs that include multi-benefit regional projects to ensure that MS4 discharges achieve compliance with all final WQBELs set forth in the Basin Plan and do not cause or contribute to exceedances of receiving water limitations by retaining through infiltration or capture and reuse the storm water volume from the 85th percentile, 24-hour storm for the drainage areas tributary to the multi-benefit regional projects.

C.3 – Specify locations for green infrastructure implementation – Baykeeper #7 – REL

Green infrastructure holds immense promise for reducing contaminants in a cost-effective manner, while achieving ancillary benefits to communities and habitats. In the absence of targeted implementation, however, risks associated with the proposed provision include high expenses in staff time and consulting fees to generate paperwork, rather than achieving improvements in the watershed. In addition, installations may generate no pollutant load reductions if located in "clean" areas. Over the last decade, millions of dollars have been spent identifying loads and hotspots for mercury, PCBs, and other stormwater-borne pollutants. If this permit in fact aims to achieve reductions in these pollutants through green infrastructure, adequate data exists to target locations for stormwater capture.

For example, a recent report drafted for the Regional Monitoring Program ("RMP"), funded in part by stormwater agencies in order to target management decisions, found particular areas known to contribute PCBs at disproportionately high rates.[3] Based on Table 1, taken from the RMP report, Pulgas Creek in San Carlos is known to maintain relatively low flows but high concentrations of PCBs, as well as copper, carbaryl, and PAHs. Such data could be utilized in modeling strategies comparable to those conducted in Los Angeles and Orange Counties, as well as the Puget Sound region, to identify areas contributing disproportionately high pollutant loads and prioritize placement of multi-benefit green infrastructure to capture, infiltrate, and reuse stormwater.

[3] Gilbreath A., Hunt J., Wu J., Kim, P., and McKee L., *Final Draft Report: Pollutants of concern (POC) loads monitoring progress report, water years (WYs) 2012, 2013, and 2014* (2015). Prepared by San Francisco Estuary Institute, Richmond, CA.

Table 1. Synthesis of concentrations of pollutants of concern based on three years of sampling data

		Lower Marsh Creek		Richmond Pump Station		San Leandro Creek		Guadalupe River		East Sunnyvale Channel		Pulgas Creek	
Analyte Name	Unit	Number (% detect)	Mean (std.error)	Number (% detect)	Mean (std.error)	Number (% detect)	Mean (std.error)	Number (% detect)	Mean (std.error)	Number (% detect)	Mean (std.error)	Number (% detect)	Mean (std.error)
SSC	mg/L	101 (94%)	108 (97%)	117 (95%)	136 (100%)	137 (98%)	96 (99%)	204 (23.5)	56.8 (5.57)	115 (13.8)	157 (12.3)	232 (31.4)	56.5 (6.27)
ΣPCB	ng/L	22 (100%)	32 (100%)	44 (100%)	39 (100%)	40 (100%)	29 (100%)	1.25 (0.258)	13.8 (1.57)	8.01 (1.16)	14.3 (2.4)	104 (27.5)	505 (261)
Total Hg	ng/L	31 (100%)	32 (100%)	44 (100%)	39 (100%)	40 (100%)	31 (100%)	38.4 (9.62)	39.6 (7.8)	106 (24.2)	212 (35.9)	47.6 (6.68)	18.2 (2.39)
Total MeHg	ng/L	20 (90%)	16 (100%)	30 (100%)	27 (100%)	27 (93%)	20 (100%)	0.291 (0.0741)	0.208 (0.0633)	0.397 (0.0663)	0.504 (0.0677)	0.295 (0.0376)	0.189 (0.033)
TOC	mg/L	30 (100%)	32 (100%)	44 (100%)	40 (100%)	40 (100%)	28 (100%)	7.13 (0.34)	11.2 (1.82)	8.24 (0.462)	12.2 (1.96)	10.1 (1.1)	20.5 (5.54)
NO3	mg/L	28 (96%)	32 (100%)	45 (100%)	36 (100%)	41 (100%)	28 (100%)	0.569 (0.0402)	0.976 (0.143)	0.425 (0.0659)	0.917 (0.099)	0.472 (0.0872)	0.466 (0.0864)
Total P	mg/L	30 (100%)	32 (100%)	44 (100%)	40 (100%)	41 (100%)	28 (100%)	0.415 (0.0441)	0.384 (0.0256)	0.288 (0.024)	0.414 (0.0376)	0.411 (0.0429)	0.29 (0.047)
PO4	mg/L	30 (100%)	31 (100%)	45 (100%)	40 (100%)	41 (100%)	28 (100%)	0.0987 (0.0074)	0.218 (0.0141)	0.1 (0.00412)	0.15 (0.0156)	0.128 (0.00905)	0.124 (0.0189)
Hardness	mg/L	4 (100%)	5 (100%)	8 (100%)	7 (100%)	8 (100%)	6 (100%)	176 (19.3)	129 (38.6)	56.5 (4.94)	138 (12.7)	124 (32.6)	69.8 (12)
Total Cu	ug/L	8 (100%)	8 (100%)	11 (100%)	10 (100%)	10 (100%)	7 (100%)	13.7 (3.59)	22.5 (4.49)	16.2 (3.07)	21.6 (2.87)	17.9 (1.88)	43.9 (10.1)
Dissolved Cu	ug/L	8 (100%)	8 (100%)	11 (100%)	10 (100%)	10 (100%)	7 (100%)	2.74 (0.588)	8.45 (1.53)	5.98 (0.682)	5 (0.939)	5.5 (1.09)	18.6 (3.91)
Total Se	ug/L	8 (100%)	8 (100%)	11 (100%)	10 (100%)	10 (100%)	7 (100%)	0.742 (0.103)	0.409 (0.0638)	0.223 (0.019)	1.31 (0.252)	0.606 (0.147)	0.292 (0.0632)
Dissolved Se	ug/L	8 (100%)	8 (100%)	11 (100%)	10 (100%)	10 (100%)	7 (100%)	0.647 (0.0886)	0.366 (0.0586)	0.166 (0.0149)	1.07 (0.266)	0.519 (0.146)	0.244 (0.0526)
Carbaryl	ng/L	8 (25%)	8 (88%)	12 (50%)	10 (90%)	10 (40%)	7 (100%)	3.63 (2.39)	21.6 (4.72)	5.82 (2.11)	29.5 (6.87)	6.5 (2.78)	105 (26.3)
Fipronil	ng/L	8 (100%)	8 (75%)	11 (91%)	10 (100%)	10 (90%)	7 (86%)	12.2 (1.19)	6.31 (1.92)	10.1 (1.89)	11.3 (1.56)	6.5 (1.13)	3.29 (0.68)
ΣPAH	ng/L	4 (100%)	4 (100%)	5 (100%)	11 (100%)	6 (100%)	6 (100%)	140 (46.5)	527 (279)	1260 (494)	416 (116)	1350 (455)	1660 (1070)
ΣPBDE	ng/L	4 (100%)	5 (100%)	5 (100%)	5 (100%)	6 (100%)	6 (100%)	27 (10.1)	789 (644)	28.5 (11.7)	60.8 (18.3)	47 (16)	45.6 (13.1)
Delta/ Tralomethrin	ng/L	8 (75%)	8 (75%)	10 (40%)	10 (50%)	9 (89%)	7 (43%)	1.5 (0.637)	2.29 (0.818)	0.391 (0.207)	0.852 (0.328)	1.77 (0.469)	0.386 (0.205)
Cypermethrin	ng/L	8 (88%)	8 (100%)	11 (55%)	10 (70%)	10 (80%)	7 (100%)	11.7 (8.24)	4.84 (1.38)	0.368 (0.115)	1.49 (0.512)	3.29 (0.63)	2.42 (0.663)
Cyhalothrin lambda	ng/L	7 (86%)	7 (100%)	9 (56%)	10 (70%)	8 (75%)	6 (83%)	1.23 (0.486)	1.1 (0.228)	0.616 (0.376)	0.556 (0.174)	0.656 (0.296)	0.35 (0.12)
Permethrin	ng/L	8 (75%)	8 (100%)	11 (55%)	10 (80%)	10 (100%)	7 (86%)	6.08 (2.29)	17.7 (5.91)	3.59 (1.24)	10.5 (2.34)	21.8 (3.61)	10.7 (3.03)
Bifenthrin	ng/L	8 (100%)	8 (100%)	11 (91%)	10 (90%)	10 (90%)	7 (100%)	75.2 (29.9)	5.88 (0.796)	8.08 (2.69)	5.29 (1.18)	8.01 (1.95)	5.14 (1.81)

In sum, significant resources have been expended to monitor stormwater-borne pollutants in the region and identify areas that contribute disproportionately to pollutant loading and impacts to beneficial uses. Failure to utilize this data for uses such as targeted green infrastructure installation and PCB load reduction puts into question the utility of the RMP and use of public funds to collect such data. It also supports arguments by Permittees that data is not being used to inform this permit and provide clear pathways to compliance with TMDL requirements. We ask that staff review available information to inform targeted wasteload reductions through installation of green infrastructure and other means.

C.4. Industrial and Commercial Site Controls

C.4 – Require minimum number of inspections – Baykeeper #8 – REL

In implementing an industrial and commercial site control program, Baykeeper believes that a minimum number of inspections should be required each year. We recognize that each jurisdiction varies in size, and therefore no single number could fairly apply to all Permittees, but

instead suggest that a set percentage (such as 10%) of industrial and commercial sites with potential to discharge stormwater pollutants be inspected annually.

C.4 – Require inspection and repair of stormwater infrastructure – Baykeeper #9 – REL

Baykeeper also notes that the Draft MRP appears to lack any provisions requiring Permittees to regularly inspect and repair their stormwater infrastructure. We request that a provision be added to the Draft MRP requiring Permittees to implement an on-going inspection program to annually inspect all stormwater treatment and flow control BMPs and facilities that are owned, operated, or regulated by the Permittees and to implement appropriate maintenance actions where any damage or defects are discovered.

C.7. – Public Information and Outreach

C.7.a. – Storm Drain Inlet Marking

C.7 – Inspect and maintain all storm drain inlet markings – Baykeeper #10 – REL

Baykeeper believes that over the course of the permit term, Permittees should be able to inspect and maintain all (*i.e*., 100%) of storm drain inlet markings of municipality maintained inlets, rather than the 80% proposed in the Draft MRP.

C.7.e – Public Outreach and Citizen Involvement Events

C.7 – Determining number of outreach events by Permittee – Baykeeper #11 – REL

We are concerned that footnote 1 to Table 7.1 may allow for fewer total events simply by virtue of a regional collaborative disseminating advertising materials throughout each jurisdiction, thereby providing said jurisdiction with credit for the event, even if the event is held
within another jurisdiction. We recommend that the number of events required be determined on a Permittee-by-Permittee basis.

C.8. Water Quality Monitoring

C.8 – Monitoring does not focus on MRP discharges – Baykeeper #12 – REL

The Water Quality Monitoring, Section C.8, included in the Draft MRP purports to answer a variety of information needs, yet, and perhaps because of its grand scope, fails to focus on whether stormwater discharges comply with the MRP conditions. The Fact Sheet states that "[o]ne purpose of the water quality monitoring is to demonstrate the effectiveness of the Permittees' stormwater management actions pursuant to this Permit and, accordingly, demonstrate compliance with the conditions of the Permit." (Fact Sheet, A-60 – A-61.) In addition, the Water Quality Monitoring is intended to answer questions that may not have anything to do with stormwater discharges, such as whether conditions in receiving waters protect beneficial uses, the extent of receiving water problems, whether conditions are getting better or worse, and the overall effectiveness of TMDL point and nonpoint source control measures. (*Id*. at A-61, A-65.) While gathering general information about the water quality of receiving water is important, this monitoring cannot

take the place of or take precedence over monitoring whether stormwater discharges comply with MRP conditions.

Federal regulations require that each NPDES permit includes monitoring provisions that "yield data which are representative of the monitored activity" (40 C.F.R. § 122.48(b)) and that "assure compliance with permit limitations." (40 C.F.R. § 122.44(a)(1)(i); *see Natural Res. Def. Council v. County of Los Angeles* ("*LA County*") (9th Cir. 2013) 725 F.3d 1194, 1207) ["an NPDES Permit is unlawful if a permittee is not required to effectively monitor its permit compliance"].) Accordingly, the MRP must include monitoring provisions that allow each Permittee, the Regional Board, and third parties to determine whether a Permittee is complying with the permit. (*See Sierra Club v. Union Oil Co. of Cal*. (9th Cir. 1982) 813 F.2d 1480, 1483; *see also City of Brentwood v. Central Valley Regional Water Quality Control Bd.* (2004) 123 Cal.App.4th 714, 723.) The monitoring provisions are key to the efficient operation of the MRP, as any other NPDES permit. (*Sierra Club*, 813 F.2d at 1491 ["The NPDES program fundamentally relies on self-monitoring."].) Monitoring serves a dual purpose: first, to allow Permittees to assess their own compliance and quickly respond if non-compliance is discovered, and, second, to "keep enforcement actions simple and speedy." (*City of Brentwood*, 123 Cal.App.4th at 723-24.)

To be legally sufficient and effective at monitoring permit compliance, the water quality monitoring provisions must focus on the discharges regulated by the permit (*i.e.*, stormwater discharges). Yet, Section C.8 does not appear to be aimed at monitoring stormwater discharges. For instance, the Pollutants of Concern ("POC") Monitoring, Section C.8.f., does not require Permittees to monitor when or where stormwater discharges occur. Also, the Creek Status Monitoring, Section C.8.d., similarly does not focus on stormwater discharges but rather at determining the overall water quality of receiving waters. Instead of focused monitoring of stormwater discharges, the MRP allows Permittees to take the whole permit term to first identify if water quality impacts are present through the POC and Creek Status Monitoring, and second to determine whether stormwater discharges are actually a source contributing to those water quality impacts.[4]

C.8 –POC Monitoring does not require monitoring where discharges occur – Baykeeper #13 – REL

A. <u>POC Monitoring, Section C.8.f., Does Not Require Permittees to Monitor When or Where Stormwater Discharges Occur.</u>

Section C.8.f. sets out the requirements for monitoring POCs during the permit term. Unlike the 2009 Permit, this section almost never states *when* Permittees should sample, nor does it ever specify *where* Permittees should sample. (*See* Fact Sheet, A-66.) The only specific requirements for POC monitoring are the types of POCs that must be monitored and the minimum number of samples to be collected per county over the permit term. (Draft MRP, Table 8-4, C.8-15.) Quite surprisingly, the Draft MRP specifically requires testing during a storm event or during the wet season for only one POC - toxicity.[5] (*Id*.) The

Draft MRP gives

[4] Moreover, monitoring focused generally on the water quality of receiving waters is repetitive of studies that have been conducted over several years in the region. As stated above, over the last decade, millions of dollars have been spent identifying loads and hotspots for mercury, PCBs, and other stormwater-borne pollutants. Yet the Water Quality Monitoring and SSID Project provisions, as explained in this section, fail to incorporate the knowledge gained through these studies and asks Permittees to spend valuable resources to start at the beginning to identify water quality impacts that have most likely already been studied.

[5] Even for toxicity, the Draft MRP does not state that such monitoring needs to occur near outfalls. The Diazinon and Pesticide-Related Toxicity in Bay Area Urban Creeks, Water Quality Attainment Strategy and Total Maximum Daily Load ("Pesticide TMDL") states that, "If aquatic life is to be protected at all creek locations, each urban creek must meet these proposed toxicity targets at all locations, *including those near storm drain outfalls where urban runoff enters receiving waters*." (Pesticide TMDL at 59 [emphasis added].) Thus, even the monitoring for toxicity
is insufficient because it fails to provide that toxicity testing must occur near storm drain outfalls.

no guidance as to where sampling should be conducted. As such, the Draft MRP does not require Permittees to monitor when and where stormwater discharges - the discharges regulated by the MRP - will occur, namely during storm events at or near stormwater outfalls.

Instead of stating when and where representative sampling should occur, the Draft MRP sets up a complicated system whereby Permittees create their own monitoring plan based on "five priority POC management information needs" ("Monitoring Priorities"). (*See* Draft MRP, C.8-13 - C.8-14.) It is unlikely that a Permittee's POC monitoring will focus on stormwater discharges given that only two Monitoring Priorities, Source Identification and Management Action Effectiveness, emphasize stormwater to any extent. Under Source Identification, Permittees should monitor to "identify[] which sources or watershed source areas provide the greatest opportunities for reductions of POCs in urban stormwater runoff." (Draft MRP, C.8-13.) Under Management Action Effectiveness, a Permittee should monitor to evaluate "the effectiveness or impacts of existing management actions," with a "focus on monitoring the effectiveness of specific management actions in reducing or avoiding POCs in MS4 discharges." (Draft MRP, C.8-13 - C.8-14, Table 8.3.) These two Monitoring Priorities, although not exclusively focused on stormwater, at least mention stormwater discharges. However, the remaining three Monitoring Priorities do not highlight stormwater discharges as a focus of the monitoring at all. (*See id.*)

C.8 – Monitoring does not provide accountability mechanism for Regional Board or third parties – Baykeeper #14 – REL

Even if the Monitoring Priorities were aimed at monitoring stormwater discharges, the permit includes no procedure by which the Regional Board or impacted third parties can hold Permittees accountable for an insufficient monitoring program. The Fact Sheet states that "the permit requires that monitoring be intelligently and flexibly directed toward answering the management information needs." (Fact Sheet, A-66.) Yet there is no method by which a Permittee's monitoring program is reviewed or under which Permittees can be held accountable.

C.8 –Require Monitoring during Storm Events and require monitoring at MS4 outfalls– Baykeeper #15 – REL

In order to be legally sufficient and to provide the most appropriate means of monitoring stormwater discharges, Baykeeper asks that the POC monitoring provisions be modified in two ways: (1) to expressly require POC monitoring during storm events, or if appropriate, during the wet season, and (2) to require that Permittees identify sampling locations at MS4 outfalls that are representative of the potential pollutants being discharged (*i.e.*, outfalls that discharge
stormwater runoff from urban infrastructure). While Baykeeper agrees that "it is impractical to sample all of the urban runoff outfalls in the region," we do not agree that this type of monitoring "would not provide commensurately better information relative to the management information needs for pollutants of concern." (Fact Sheet, A-66.) Rather, sampling at representative outfalls would balance the limited resources of Permittees with the need to assure stormwater discharges are meeting the conditions of the MRP, as is required by the Clean Water Act.

B. <u>The Creek Status Monitoring Provisions in Section C.8.d. Fail to Focus on Stormwater Discharges.</u>

C.8 – Creek Status Monitoring does not monitor impacts of stormwater discharges – Baykeeper #16 – REL

Even more so than the POC monitoring requirements, the Creek Status Monitoring, Section C.8.d., will not effectively monitor the impacts of stormwater discharges. The Draft MRP states that the "Creek status monitoring is intended to assess the chemical, physical, and biological impacts of *urban runoff* on receiving waters." (Draft MRP, C.8-2 [emphasis added].)

Despite the stated purpose of this monitoring, the questions the Creek Status Monitoring is intended to answer concern the general water quality of receiving waters, not the impact that stormwater has on these waters. (*See id.*) Specifically, the Fact Sheet states that monitoring is intended to answer whether water quality objectives are being met in local receiving waters and whether conditions in receiving waters are supportive of or likely to be supportive of beneficial uses. (*Id.*)

Moreover, the specific sampling requirements under this section often require sampling during the dry season, when stormwater discharges do not occur. For example, the Draft MRP requires biological assessments (Section C.8.d.i.), and monitoring for toxicity in the water column (Section C.8.d.iv.), and pathogen indicators (Section C.8.d.vi.) during the dry season. Because this sampling will only occur in the dry season, it will not indicate whether stormwater discharges cause or contribute to any water quality issues discovered. Particularly curious, the Draft MRP requires sampling for pathogen indicators during the dry season, yet the Draft MRP also states that the monitoring is intended to detect sewer leaks. In order to detect exfiltration from the sanitary sewer system to the MS4, rainfall is required. It makes no sense that monitoring for these parameters, in particular pathogens, occurs during the dry season.

Again, the Fact Sheet states that sampling at all outfalls is impracticable and "would not provide commensurately better information." (Fact Sheet, A-63.) Yet representative outfall sampling would provide information targeted at stormwater discharges and would

allow "assess[ment] of the chemical, physical, and biological impacts of urban runoff on receiving waters," which is the stated purpose of Creek Status Monitoring. (*See* Draft MRP, C.8-2.) Instead, the Creek Status Monitoring, by providing information only about the receiving waters, is only a "first step in identifying sources of pollutants." (Fact Sheet, A-63.) In other words, this type of monitoring fails to "yield data which are representative of the monitored activity," as required of NPDES permits. (40 C.F.R § 122.48(b).)

C.8 –Monitoring will delay addressing water quality impacts– Baykeeper #17 – REL

C. <u>The Deficiencies in Water Quality Monitoring Will Lead to Unnecessary Delay in Addressing Water Quality Impacts.</u>

Instead of monitoring stormwater discharges, the Draft MRP sets up a lengthy, costly, and potentially fruitless process to determine whether stormwater discharges are the source of water quality impacts, through the Stressor/Source Identification ("SSID") Projects, Section C.8.e. As explained above, the Creek Status and POC Monitoring do not focus on whether stormwater discharges are causing or contributing to water quality impacts in receiving waters. Rather, they focus on determining whether the receiving waters in general have water quality issues. Thus, when water quality impacts are discovered, the Permittees must consider an SSID Project to study whether stormwater is contributing to the impact. (Draft MRP, C.8-10.)

An SSID Project is a three-step process. Step 1 requires the Permittee to develop a work plan for the SSID Project. Step 2 requires the Permittee to conduct SSID investigations according to the work plans. If Steps 1 and 2 conclude that stormwater discharges are sources of water quality issues, Step 3 requires the Permittee to submit a report describing current BMPs, the current level of implementation, and additional BMPs that the Permittee will implement to prevent or reduce discharges of pollutants. However, if the Permittee determines that stormwater is not a source, no follow-up actions are required.

In effect, the SSID Project process allows Permittees to delay or avoid taking any real steps to address water quality issues posed by stormwater discharges. The Draft MRP fails to require that Permittees start all SSID Projects by the end of the permit term. The Draft MRP only requires that half of all SSID Projects (2.5 for the largest counties) be started by the third year of the permit term, and that Permittees *attempt* to complete all steps for half of the SSID Projects during the permit term. Step 3 is simply a report stating what additional BMPs are needed. It does not require that BMPs actually be implemented. Therefore, at the end of the permit term, no real, on-the-ground changes to address illegal stormwater discharges are required to happen. At a minimum, the MRP should clarify that all SSID Projects required by the permit be completed prior to end of the permit term.

C.8 – SSID Requirements unclear – Baykeeper #18 – REL

A Permittee need not conduct an SSID Project for all, or even a significant percentage of, water quality impacts discovered. A Permittee need only *consider* conducting an SSID Project, but must actually conduct only a minimum number of SSID Projects. However, for a stormwater countywide program, it is unclear how many total

SSID Projects are required. The Draft MRP states that:

> If conducted through a stormwater countywide program, the Santa Clara and Alameda Permittees each shall be required to initiate no more than five (minimum one for toxicity) SSID projects; the Contra Costa and San Mateo Permittees each shall be required to initiate no more than three SID (one for toxicity) projects; and the Fairfield- Suisun and Vallejo Permittees each shall be required to initiate no more one SSID project(s) during the Permit term.

Draft MRP, C.8-11. Does this provision mean that all Permittees in Santa Clara County collectively need only conduct one SSID Project, but no more than five, over the permit term? Or does this provision mean that all individual Permittees in Santa Clara County must conduct one SSID Project, but no more than five, over the Permit term? This provision should be clarified to make the minimum number of SSID projects required clear.

C.8 – SSID Requirements arbitrary – Baykeeper #19 – REL

In either case, the number of SSID Projects required by the Draft MRP is arbitrary because it is not related to the number of water quality impacts discovered. In all likelihood, water quality impacts discovered through Creek Status and POC Monitoring will not require a SSID Project. This provision should be modified to tie the number of SSID Projects required to the number of water quality impacts discovered. For instance, the MRP should require that Permittees conduct SSID Projects for a specific percentage – 50% - of all water quality impacts discovered within their jurisdiction.

C.8 – SSID Requirements represent delay – Baykeeper #20 – REL (could be combined with #17)

Even with the changes suggested above, however, this process constitutes nothing more than needless delay. Instead of a multi-year SSID Project to determine whether stormwater discharges are contributing to water quality impacts, the MRP should simply include sampling targeted at stormwater discharges, such as requiring sampling during storm events at representative MS4 outfalls. The monitoring itself will alert a Permittee whether or not stormwater discharges are causing or contributing to water quality impacts. Thus, Steps 1 and 2 of the SSID Project process would no longer be necessary. If the monitoring shows that stormwater discharges are a source of water quality impacts, the Permittee should be required to undergo a Step 3 analysis to determine further BMPs that will actually address the water quality problems, and to implement additional BMPs within a reasonable time period.

D. Targeted Stormwater Sampling Will Benefit Permittees, the Regional Board, and Third Parties.

C.8 – Targeted sampling of discharges benefits all parties – Baykeeper #21 – REL

Monitoring requirements that focus on determining whether stormwater discharges

are contributing to water quality issues will benefit all interested parties, including Permittees. In *LA County*, the Ninth Circuit held that Los Angeles County permittees responsible for violations of receiving water limitations when only in-stream monitoring had been required by the MS4
permit. (725 F.3d at 1196-97.) The permittees in that case claimed that in-stream monitoring could not show that the stormwater discharges themselves caused the water quality violations. (*Id*. at 1204.) The Ninth Circuit, however, held the permittees responsible, despite this alleged uncertainty, stating the following:

> In sum, and contrary to the County Defendant's contentions, the language of the Permit is clear – the data collected at the Monitoring Stations is intended to determine whether the Permittees are in compliance with the Permit. If the District's monitoring data shows that the level of pollutants in federally protected water bodies exceeds those allowed under the Permit, then, as a matter of permit construction, the monitoring conclusively demonstrate that the County Defendants are not 'in compliance' with the Permit conditions.

(*Id*. at 1206-07.)

Assuming violations of water quality standards are discovered through the Creek Status or POC monitoring, according to *LA County*, Permittees will not be shielded from liability even if there is an argument that the monitoring does not show that stormwater discharges are causes of the violations. It only makes sense to include monitoring that focuses on stormwater
discharges, specifically sampling at representative outfalls during storm events. Such monitoring will allow Permittees, regulators, and third parties to effectively determine whether stormwater discharges are the actual source of water quality violations and to take actions to remedy such violations.

C.9. Pesticides Toxicity Control

Baykeeper appreciates the limitations that the Permittees face in regulating the use and application of pesticides in their jurisdictions. At the same time, Baykeeper also recognizes that, despite the regulatory challenges, stormwater is the primary source of pesticide loads to Bay
Area urban creeks. (Diazinon and Pesticide-Related Toxicity in Bay Area Urban Creeks, Water Quality Attainment Strategy and Total Maximum Daily Load, November 9, 2005 ("Pesticide TMDL") at 43.) Because essentially the only source of pesticides in Bay Area urban creeks is urban runoff, the TMDL assigns all waste load reductions to stormwater. (Pesticide TMDL at
72.) The Clean Water Act requires that the Regional Board incorporate the waste load allocations included in the Pesticide TMDL into the MRP. (*See* 40 C.F.R. §
122.44(d)(1)(vii)(B).) Therefore, despite the challenges faced by Permittees and the Regional Board in meeting waste load allocations, reductions of pesticide loads must occur in accordance with the Pesticide TMDL and the Clean Water Act.

C.9 – Permittees not required to reduce pesticide use – Baykeeper #22 – REL

Baykeeper is concerned that the Draft MRP does not establish a system whereby Permittees are required to reduce pesticide use. The last permit iteration required Permittees to establish IPM ordinances and policies and to report pesticide use. The Draft MRP requires Permittees to maintain these ordinances and policies and to continue to track pesticide use, reporting specifically when they increase use. (Draft MRP, C.9-1 – C.9-2.) However, there is no obligation that Permittees actually decrease the use of pesticides, and as a result, there is no obligation that Permittees reduce the amount of pesticides entering urban creeks through urban runoff.

As stated in the Pesticide TMDL, IPM "may involve the use of pesticides, but only when *absolutely necessary*." (Pesticide TMDL at 80.) Regional Board staff has found that "most IPM policies need improvements, such as fully committing to IPM throughout the municipality and clarifying that pesticides with known water quality impacts should only be used as a last resort." (Staff Summary Report, Urban Creeks Pesticide Toxicity TMDL - Implementation Status Report (Mar. 9, 2011).) However, the Draft MRP fails to require that Permittees only use pesticides when necessary. The Draft MRP should be revised to require that Permittees, in fact, reduce their pesticide use in their municipal operations and on municipal property and only use pesticides when necessary.

C.9 – Permit should require continual improvement of IPM – Baykeeper #23 – REL

Also, there is no requirement in the Draft MRP that Permittees modify their IPM policies to include new or developing practices that have proven to be effective. The Draft MRP requires only that Permittees describe their IPM tactics or strategies in their annual reports. (Draft MRP, C.9-2.) As advancements in IPM evolve, the MEP standard for municipal stormwater discharge controls also evolves. (*See* 33 U.S.C. § 1342(p)(3)(B)(iii).) MEP is not static; the standard anticipates and requires new and additional controls to be included with each successive permit. As U.S. EPA has explained, NPDES permits, including the MEP standard, will "evolve and mature over time" and must be flexible "to reflect changing conditions." (55 Fed. Reg. 47,990,48,052 (Nov. 16, 1990).) "EPA envisions application of the MEP standard as an iterative process. MEP should continually adapt to current conditions and BMP effectiveness and should strive to attain water quality standards. Successive iterations of the mix of BMPs and measurable goals will be driven by the objective of assuring maintenance of water quality standards." (64 Fed. Reg. 68,722, 68,754 (Dec. 8, 1999).) Therefore, the Draft MRP must include a mechanism by which Permittees are required to evaluate and implement new and effective methods of IPM.[6]

[6] The Pesticide TMDL also incorporates adaptive management as being key to reducing pesticide loads. (Pesticide
TMDL at 81, 96-98.)

This failure to update IPM standards is especially problematic since the 2009 Permit required Permittees to evaluate their IPM efforts, how effective those efforts appear to be, and the attainment of pesticide concentration and toxicity targets for water and sediment. (2009 Permit at 82.) It is unclear if and how the Draft MRP builds and learns from the lessons learned during the last permit term. It is critical that this type of reporting is not

merely a paper exercise, but is used to more effectively address pesticide pollution. Yet there is no analysis or discussion in the Draft MRP or the Fact Sheet discussing whether pesticide use has decreased through the 2009 Permit, whether IPM measures are proving to be effective, and whether pesticide concentrations and toxicity targets are being attained.

C.10. Trash Load Reduction

C.10 – Trash assessment protocols inadequate to determine compliance – Baykeeper #24 – REL

Baykeeper wishes to repeat our on-going disappointment with trash load reduction efforts conducted pursuant to the 2009 Permit. Permittees failed to generate valid trash load baselines and adequate Trash Load Reduction Tracking Methods, which in turn has prevented their on- going ability to demonstrate compliance with mandatory trash load reductions. Permittee's failure to develop adequate baselines, tracking methods, and load reductions is due in large part to the 2009 Permit's lack of specificity. Instead of including specific methodologies in the 2009 Permit, the Regional Board required Permittees to develop these tools themselves, an obligation which the Permittees outsourced to the Bay Area Stormwater Management Agencies Association ("BASMAA"). BASMAA is not a regulatory agency, but rather an organization representing the interests of Permittees. Despite the fact BASMAA has received $870,000 in Proposition 84 funds to develop monitoring methods and other deliverables pursuant to the Trash Reduction Provisions, the assessment protocols do not provide a mechanism for determining compliance with trash load reduction standards (*i.e.*, 100% trash load reduction by July 1, 2022). This approach clearly is not working and the Regional Board must introduce specific permit requirements if it wishes to clean up trash-laden shorelines and urban creeks currently clogged with trash.

An example of disappointing results can be seen at the mouth of East Creek Slough in Oakland. Photos taken after storm events in 2012 and 2014 suggest conditions have worsened here. Similar results have been observed in South Bay creeks and recent (early-2015) monitoring by the San Francisco Estuary Institute ("SFEI") for microplastics indicate small fish in the South Bay may have higher levels of plastic contamination that ~~typically seen in the Great~~ Lakes.[7]

[7] Based on initial unpublished results provided by Rebecca Sutton of SFEI.

Figure 1. West-facing view near the terminus of East Creek Slough in the Martin Luther King Jr. Regional Shoreline, Oakland. Photo taken by Ian Wren on March 14, 2012

Figure 2. Northwest-facing view of a storm drain near East Creek Slough in the Martin Luther King Jr. Regional Shoreline, Oakland. Photo taken by Ian Wren on March 14, 2012

Figure 3 and 4. North- and south-facing views at the mouth of East Creek Slough in the Martin Luther King Jr. Regional Shoreline, Oakland. Photos taken by Ian Wren on December 8, 2014

A. Section C.10's Compliance Assessment Protocols Lack Specificity or Enforceability.

C.10 – Compliance assessment lacks detail – Baykeeper #25 – REL

Since performance shall ultimately be judged based on receiving water quality, the Regional Board must provide the basis upon which receiving waters shall be evaluated and how load reduction should be calculated. The specifications for receiving water observations, described in Section C.10.b.iii., lack sufficient detail for Permittees to follow and provide no basis from which Permittees can determine compliance with permit terms. As such, they are inconsistent with the Clean Water Act:

> First and foremost, the Clean Water Act requires every NPDES permittee to monitor its discharges into the navigable waters of the United States in a manner sufficient to determine whether it is in compliance with the relevant NPDES permit. 33 U.S.C. § 1342(a)(2); 40 C.F.R. § 122.44(i)(1) ("[E]ach NPDES permit shall include conditions meeting the following . . . monitoring requirements . . . to assure compliance with permit limitations."). That is, an NPDES permit is unlawful if a permittee is not required to effectively monitor its permit compliance. See 40 C.F.R. § 122.26(d)(2)(i)(F) ("Permit applications for discharges from large and medium municipal storm sewers . . . shall include ...monitoring procedures necessary to determine compliance and noncompliance with permit conditions . . . .").

(*LA County*, 725 F.3d at 1207.)

C.10 – "Trash generation areas" unrelated to receiving water quality – Baykeeper #26 – REL

In particular, Baykeeper has serious concerns regarding the Draft MRP's approach of demonstrating attainment of mandatory deadlines through the use of "trash generation areas," which appear to be arbitrarily established and may have no correlation to the quality of receiving waters. Although the four Very High, High, Moderate, and Low categories have specific trash generation rates attached to them, there appears to be significant discretion and confusion regarding how the Permittees will categorize areas within their jurisdictions and calculate percentage discharge reductions.

C.10 – Establish compliance using loading at point of discharge – Baykeeper #27 – REL

We urge the Regional Board to develop an alternate compliance standard based on trash loading at the point of discharge. A sample alternative compliance framework for assessing trends at the point of outfalls is provided as Appendix 1 to these comments. This approach calls for end-of-pipe full capture devices, some of which have been evaluated by Permittees, to assess trash loading from representative discharge points. Such an approach has been endorsed by Region 4 and may be preferred by some Permittees given the lack of a clear compliance pathway under the proposed C.10 language. The Regional Board may also wish to specify such an approach where Permittees discharge to a 303(d) listed waterbody for trash.

C.10 – Permit should describe observation and assessment protocols – Baykeeper #28 – REL

Receiving water observations and assessment protocols must also be described in order to reduce uncertainty and the perception of shifting standards imposed on Permittees as the permit progresses. Options for evaluating receiving water quality and load reduction performance include fixed line transects at known trash hot spots, end of pipe full capture, and installation of trash booms.

B. <u>The Regional Board Should Require Mandatory Deadlines Rather than "Performance Guidelines" in All Years.</u>

C.10 – Permit should require mandatory reductions in all permit years – Baykeeper #29 – REL

Baykeeper does not understand the approach taken in Section C.10.a.i. of requiring mandatory trash reductions in years 2017 and 2022, but "performance guidelines" in years 2016 and 2019. The Regional Board should revise the Draft MRP to state that the 60% reduction requirement for July 1, 2016 and the 80% reduction requirement for July 1, 2019 are mandatory deadlines.

C. <u>The Regional Board Should Not Offer Any Additional Offsets or Credits for Source Control.</u>

C.10 – Permit should not provide offsets for source control – Baykeeper #30 – REL

While Baykeeper supports educational programs and municipal ordinances, such as polystyrene food container bans, that can potentially reduce the generation of trash, Permitees should not be allowed to meet the mandatory deadlines in the Draft MRP by simply obtaining "offsets" for these measures, without demonstrating actual reductions in trash discharges

from the MS4 system. If these types of source control measures are actually working and effective,
Permittees will get all the credit they need based on the fact that trash discharges will be reduced. No further offsets or credits should be provided in addition to what is already included in the Draft MRP.

D. Reporting and Consequences for Non-Compliance under Section C.10.F. Must Be Strengthened.

C.10 – Non-compliance consequences should be strengthened – Baykeeper #31 – REL

Baykeeper is greatly concerned about the lack of consequences for Permittees that cannot demonstrate attainment of the mandatory deadlines or performance guidelines. In particular, the consequences of non-compliance must be strengthened in order to achieve the stated reductions and avoid violations of Discharge Prohibition A.2. For Permittees that fail to meet performance guidelines, the Regional Board should (1) impose specific control actions to achieve attainment of the guideline, and (2) require the Permittees to demonstrate attainment within a specific time period (*i.e.*, 6 months). For Permittees that fail to meet mandatory deadlines, the Regional Board should (1) require the installation of additional full trash capture systems to achieve the deadline, and (2) require the Permittees to demonstrate compliance with the deadline within a specific time period (*i.e.*, 6 months) rather than the Draft MRP's standard of "in a timely manner."

C.11. Mercury Controls

C.11 – TMDL allocation should be enforceable limit – Baykeeper #32 – REL

The San Francisco Bay Mercury TMDL calls for an urban stormwater mercury load reduction of 40 kg/yr between the 2003 estimated load (160 kg/yr) and 2018 (120 kg/yr). The Draft MRP should be revised to make clear that this is an enforceable limit. (*See* Basin Plan, 7-29 [adopting interim milestone].)

C.11 – Stormwater monitoring should be used to assess compliance – Baykeeper #33 – REL

The Draft MRP mercury controls completely hand over development of both load reduction techniques as well as assessment methodologies to the Permittees. (*See* Fact Sheet, A-87.) We are concerned, in particular, that any assessment methodology used to determine compliance with waste load allocations be supported by actual stormwater sampling data, and not be purely theoretical. Without stormwater discharge monitoring, there is no way by which Permittees or the Regional Board can judge whether the control measures are actually reducing mercury loads into receiving waters. As stated above, the water quality monitoring provisions currently do not require Permittees to specifically monitor stormwater discharges, and must be revised.

C.11 – Permit should require methylmercury monitoring– Baykeeper #34 – REL

In fact, the Mercury TMDL, as adopted in the Basin Plan, requires that Permittees "monitor levels of methylmercury *in discharges*." (Basin Plan, 7-29 [emphasis added].) The Fact Sheet states that this requirement to monitor discharges was satisfied during the 2009 Permit. However, since discharges are still occurring, the requirement in the TMDL is still applicable

and must be included in the MRP.

C.1 – Delete safe harbor language– Baykeeper #35 – REL

Granting almost complete discretion to Permittees to develop load reduction techniques and assessment methodologies is troubling also because Section C.1 of the Draft MRP negates the safeguard usually provided by Receiving Water Limitations. Receiving Water Limitations are included in NDPES permits to ensure that discharges do not cause to water quality impacts, if technology-based standards are insufficient to protect beneficial uses. Section C.1 states that if a Permittee complies with the mercury controls in Section C.11, the Permittee will be deemed in compliance with Receiving Water Limitations. Yet, to reiterate, the actual control measures to regulate mercury discharges have not been developed or shown to be effective at protecting water quality. Therefore, Section C.1 takes away any safeguard that Permittees will be held liable for mercury discharges that contribute to water quality exceedances if control measures prove to be ineffective. The Regional Board should revise the Draft MRP to delete the portion of Section C.1 that grants Permittees a safe harbor from violating Receiving Water Limitations, so as to ensure that receiving waters are protected.

C.11 – Require explanation of pollution controls and costs– Baykeeper #36 – REL

In addition, the Draft MRP fails to give appropriate guidance to Permittees on how to develop control measures that meet MEP. The Draft MRP's requirement that Permittees prepare an implementation plan to achieve TMDL allocations limits control measures to those that are "economically feasible" without explanation as to how that term should be interpreted consistent with MEP. (Draft MRP, C.11-6.) "[MEP] means to the fullest degree technologically feasible for the protection of water quality, except where costs are wholly disproportionate to the potential benefits . . . ." (*North Carolina Wildlife Fed. Central Piedmont Group of the NC Sierra Club v. N.C. Division of Water Quality* (N.C.O.A.H. October 13, 2006) 2006 WL 3890348, Conclusions of Law 21-22.) To meet this standard, the MRP should require an explanation of pollution controls that were rejected as economically infeasible, together with a description of how the Permittee determined that the costs were "wholly disproportionate to the potential benefits." This analysis will allow the Regional Board and the public be able to consider whether pollution control methods more effective than those proposed by Permittees are required.

C.11 – Inappropriate to credit load reductions before occurrence– Baykeeper #37 – REL

Baykeeper also questions the propriety of crediting Permittees with mercury load reductions before they occur. The Draft MRP provides that:

> For control measures requiring construction or installation of new infrastructure that are under construction but not fully operational as of the end of the permit term, one-half (50%) of the estimated mercury yearly load reduction shall be counted in year 5 with the remaining 50% load reduction credited during the future year that the infrastructure element is fully operational.

(Draft MRP at C.11-3.) Until planned pollution controls are in place, no mercury load reduction credit is warranted, as no mercury load reduction will have occurred. Moreover, at such time, it will remain uncertain whether the infrastructure will actually be completed, and if

it is, whether
it fully achieves the pollution reduction target it has been designed for. The Draft MRP makes no contingency plan for retroactively retracting credits if the project ultimately fails to achieve its goals. This may result in some level of double counting, if during the first year the infrastructure element is fully operational, the full and actual load reduction of that year is credited, in addition to the retroactive 50% credit from the construction year.

C.11 – Green infrastructure load reductions insufficient– Baykeeper #38 – REL

Baykeeper supports requiring reductions to be achieved through implementation of green infrastructure, but question (1) whether the modest targets represented in g/yr are sufficient to maintain progress towards both interim and final load allocations, and (2) the use of year 2040 as a planning horizon when the TMDL requires a load allocation of 82 kg/yr be attained by year 2028. This concern is magnified by the fact that the Draft MRP anticipates that its modest g/yr targets be attained across each county, rather than by each individual Permittee.

C.12. Polychlorinated Biphenyls (PCBs) Controls

Baykeeper has the same concerns with this section as with the mercury controls in regards to the following:

C.12 – PCB TMDL allocations should be enforceable– Baykeeper #39 – REL (see Hg comment)

- The Draft MRP should be clear that interim limits are enforceable.

C.12 – Stormwater monitoring should be used to assess compliance – Baykeeper #40 – REL (see Hg comment)

- Assessment methodology used to determine compliance with waste load allocations must be supported by actual stormwater sampling data and not be purely theoretical. This is particularly true for PCBs, since the Regional Board acknowledges that the "effectiveness and benefits of control measures remain uncertain." (Fact Sheet, A-98.) Moreover, the calculation of anticipated reductions in PCB loads is based purely on modeling, which the Fact Sheet states will be updated if necessary. (*See id.*, A-98 – A-101.) Yet, without actual stormwater discharge monitoring, there is no way to judge whether the control measures were effective or the modeling properly calculated reductions.

C.1 – Delete Safe Harbor language– Baykeeper #41 – REL (see other similar comment)

- The MRP should not grant a safe harbor for violations of Receiving Water Limitations to Permittees even if they are in compliance with Section C.12.

C.12 – Inappropriate to credit load reductions before occurrence – Baykeeper #42 – REL (see similar comment)

- The MRP should not delete the provision that allows Permittees to count load reductions for control measures that are not yet operational.

C.12 – Show analysis of costs for control measures– Baykeeper #43 – REL (see similar

comment)

- The MRP should be clear that MEP requires implementation of control measures that are technically feasible, unless costs are "wholly disproportionate to the potential benefits," and Permittees should be required to show this analysis to the Regional Board.

C.12 – Clarify creditable load reductions– Baykeeper #44 – REL

The Draft MRP states that: "Load reductions from control measures implemented prior to the effective date of this permit may be counted toward the required reductions of this permit term if these control measures were established or implemented during the last permit term, but load reductions from the activity were not realized or credited during the last permit term." We are unclear under what circumstances load reductions would have been achieved under the 2009 Permit term, but not credited, and how verification of such load reductions would be made to appropriately credit during under the new MRP.

The PCB load reduction assessment report includes reporting on PCBs load reductions "achieved through other relevant efforts not explicitly required by the provisions of this permit." We ask that this be clarified to apply only to stormwater load reductions.

C.12 – Clarify use of 2040 as target year for GI reductions– Baykeeper #45 – REL

Again, we question the benefit and appropriateness of targeting year 2040 for demonstration of PCB load reductions through green infrastructure implementation when the TMDL waste load allocation should be achieved by 2030. We, of course, support further load reductions after the 2030 load allocations are attained, as would result from these provisions. However, we believe interim and final targets for green infrastructure leading up to year 2030 would be appropriate.

C.13 Copper Controls

Although San Francisco Bay is not impaired for copper, there is concern regarding potential increases in loading of copper to San Francisco Bay. (Basin Plan at 7-17.) The Regional Board, through the Basin Plan, has adopted numeric site-specific objectives ("SSOs") to maintain beneficial uses. (California Regional Water Quality Control Board, San Francisco Bay Region, Copper Site-Specific Objectives in San Francisco Bay, Proposed Basin Plan Amendment and Draft Staff Report, June 6, 2007 ("Copper SSO Report") at 4-1; *see also* Basin Plan at 7-17 – 7-20.) SSOs are only necessary when maintenance of beneficial uses cannot be achieved through reasonable treatment, source control and other pollution prevention measures. (*See id.*)

The Draft MRP proposes to meet these SSOs through the Copper Controls described in Section C.13. (Draft MRP, C.13-1 – C.13-2.) These measures include requirements that Permittees adopt ordinances prohibiting the discharge of wastewater to storm drains generated from the installation, cleaning, treating, and washing of copper architectural features and from pools, spas, and fountains that contain copper-based chemicals. [8] (*Id.*) Also, Permittees are required to inspect industrial sources of copper. (*Id.*) These measures are the same measures included in the 2009 Permit. Section C.1 of the Draft MRP grants Permittees a safe harbor for

potential Receiving Water Limitation by stating that compliance with Copper Controls in Section C.13 "shall constitute compliance during the term of this Order with Receiving Water Limitations B.1 and B.2." (Draft MRP, C.1-1.)

C.13 – No demonstration of sufficiency of copper control measures– Baykeeper #46 – REL

Neither the Draft MRP, nor the Fact Sheet, makes any showing that the control measures included in Section C.13 are sufficient to meet copper SSOs. EPA Guidance states that, when adopting measures to maintain or re-attain water quality standards, the agency should have "reasonable assurances" that the measures it adopts will effectively meet its goals. (U.S. EPA, Report of the Federal Advisory Committee on the Total Maximum Daily Load (TMDL) Program, July 1998, at ii.) Reasonable assurance requires analyzing the effectiveness of management measures. (*Id*. at 39.) The Draft MRP simply requires the same measures it required in the 2009 Permit without any analysis of whether these measures are sufficient to meet the copper SSOs.

C.13 – No updated assessment of copper control measures– Baykeeper #47 – REL

This failure to evaluate the effectiveness of the Copper Controls also contradicts the Basin Plan. The Basin Plan requires that the MRP include "implementation of best management practices and copper control measures to prevent urban runoff discharges from causing or contributing to exceedances of copper water quality objectives." (Basin Plan at 7-17.) The Basin Plan specifically requires that "[r]equirements in each permit issued or reissued and applicable for the term of the permit shall be based on an updated assessment of control measures to reduce copper in stormwater runoff to the maximum extent practicable." (*Id*.) The Draft MRP does not include an "updated assessment of control measures" for any of the three

[8] Presumably, all Permittees have adopted such ordinances during the term of the 2009 Permit. Therefore, this provision does not impose further requirements on any Permittee and will not result in further reductions of copper in stormwater discharges.

sources targeted in Section C.13: copper architectural features, copper algaecides, and industrial sites. Rather, it simply merely repeats the same requirements that were included in the 2009 Permit.

C.13 – Why were control measures from last permit have removed? – Baykeeper #48 – REL

Moreover, the 2009 Permit included additional Copper Controls that have been removed in the Draft MRP. Specifically, the 2009 Permit required Permittees to "engage in efforts to reduce the copper discharged from automobile brake pads" by participating in the Brake Pad Partnership. (2009 Permit at 103.) Although Senate Bill 346 was passed as a result of the Brake Pad Partnership, the law does not require the phase out of copper in brake pads until 2025. Substantial copper loads will enter the Bay and its tributaries in the meantime. It is unclear whether the Regional Board has considered this timeframe in determining whether the Copper Controls are sufficient. In the 2009 Permit, Permittees were also required to "conduct or cause to be conducted technical studies to investigate possible copper sediment toxicity and technical studies to investigate sub-lethal effects on salmonids." (*Id*. at 104.) It is unclear how, or whether, the Draft MRP incorporates the information gathered from the studies over the last permit cycle, although presumably such studies were initiated to inform future copper

measures.

The Draft MRP's reliance on unproven Copper Controls is especially troubling because the Draft MRP takes away safeguards if the Copper Controls are insufficient at protecting water quality. For instance, the Draft MRP establishes that compliance with the Copper Controls is sufficient to show compliance with Receiving Water Limitations. (Draft MRP, C.1-1.) Thus, even if the Copper Controls prove to be ineffective, a Permittee would not be considered to be in violation of Receiving Water Limitations.

C.13 – Permit should require wet weather sampling at outfalls – Baykeeper #49 – REL

Moreover, the Draft MRP fails to include an accounting system whereby the Regional Board or Permittees can measure whether the Copper Controls are, in fact, regulating copper discharges so that they do not cause or contribute to violations of SSOs. As discussed above, the water quality monitoring provisions do not specifically require that Permittees monitor stormwater discharges. Permittees, on a countywide basis, must take a minimum of 20 samples for copper over the permit term, but these samples need not occur during storm events or at stormwater outfalls. (Draft MRP at C.8-15.) The Regional Board, however, recognizes that "the most significant loading of most constituents, including copper, occurs during wet weather urban runoff flow events." (Copper SSO Report at 3-3.) It is illogical that sampling for copper, as for most constituents, need not occur during storm events when the most significant loading occurs. Moreover, since the sampling will likely not monitor the actual copper loads entering receiving waters through stormwater, the monitoring will be insufficient to determine whether the Copper Controls are effectively regulating copper loading.

Conclusion

Thank you for the opportunity to comment on and offer improvements to the Draft MRP. Baykeeper expects that some Permittees would oppose some of the recommendations made in this comment letter, by claiming that these changes would be too costly or require cuts to other programs. Yet, as the Regional Board has acknowledged, failing to properly regulate stormwater pollution will have significant public health and economic repercussions. (Fact Sheet, A-10.) While some of Baykeeper's recommendations may arguably cost Permittees incrementally more than the requirements included in the Draft MRP, the estimated costs of compliance are significantly lower than what households are willing to pay for clean water. (*See* Draft MRP, Fact Sheet at A-8 – A-10.) The Regional Board cites a study conducted by the California State University, Sacramento that found that households are willing to pay $180 annually for clean water. (*Id*. at A-10.) Yet various studies have estimated that compliance with Phase I programs typically costs from $9 to $46 per household annually. Therefore, any costs associated with the changes Baykeeper suggests will not only ensure that the MRP meets the requirements of the Clean Water Act and effectively regulates stormwater discharges, but will also be well within the costs that average residents find reasonable to protect water quality.

Moreover, and perhaps more importantly, cost is a relevant factor in determining MEP, but only to the extent that costs associated with control technologies are prohibitive. (Draft MRP, Fact Sheet at A-8.) All studies cited in the Fact Sheet have found that the benefits to updates to stormwater controls, both non-structural and structural, far outweigh the costs. (*Id*. at A-10.) Moreover, the modifications to the MRP suggested by Baykeeper may require Permittees to invest incrementally more in compliance with the permit, but compared to the current iteration

of the MRP, would not be cost prohibitive.

APPENDIX 1: ALTERNATIVE C.10 FRAMEWORK

TRASH LOAD REDUCTION: ALTERNATIVE COMPLIANCE FRAMEWORK

Permittees shall demonstrate compliance with Discharge Prohibition A.2 and trash-related Receiving Water Limitations through the timely implementation of control measures and other actions to reduce trash loads from its municipal separate storm sewer system (MS4) in accordance with the requirements of this provision.

1) SCHEDULE

Permittees shall reduce trash discharges from 2015 levels, as established herein in Section 2, to receiving waters in accordance with the following schedule:

a. 80% by July 1, 2019; and
b. 100%, or no adverse impact to receiving waters from trash, by July 1, 2022.

2) END-OF-PIPE LOAD ASSESSMENT PROTOCOL: BASELINE LOAD AND ON-GOING TRACKING

This recommended trash load assessment protocol entails end-of-pipe quantification at outfalls representative of various land uses. Determination of available commercial products to facilitate end-of-pipe capture was informed by final reports pursuant to the San Francisco Estuary Partnership's (SFEP) Bay Area-wide Trash Capture Demonstration Project (Demonstration Project).

Under the Demonstration Project, various structural trash capture devices were installed and tested for performance between December 2012 and February 2014.[9] Included in the assessment were two (2) end-of-pipe net devices: Fresh Creek Technologies End of Pipe Netting Trash Trap and the Kristar Nettech Gross Pollutant Trap.[10] Such nets are known as 'release nets,' since they are attached to stormwater outfalls and remain in place until flow rises sufficiently to release a catch that holds the net in place. When the nets release, they are attached to the side of the pipe by a steel cable to tether the net and retain material contained in the net.

Sixteen (16) of these two products were installed in the region under the Demonstration Project. Of these, nine (9) remained intact during the assessment period. The remaining nets required maintenance associated with ripped nets and/or clogging. Based on narrative performance assessments, the Kristar product generated better results, in terms of lower maintenance requirements and overall effectiveness. Added benefits of the Nettech Trap include lower cost, ease of installation, and a local (Santa Rosa, CA) manufacturer. Appendix 1 of the Demonstration Project Final Report contains a summary of the Kristar Nettech device.

---

[9] Final reports and project summaries of the Bay Area-wide Trash Capture Demonstration Project *available at*: www.sfestuary.org/our-projects/water-quality-improvement/trashcapture/.
[10] Details regarding Kristar's Nettech Gross Pollutant Trap are *available at*: www.kristar.com/index.php/trash-debris-capture/nettech-gross-pollutant-trap.

Reviews and descriptions of the Nettech product suggests they rarely fill sufficiently to cause the bags to release. Accordingly, if cleaned after a storm event, the entire quantity of material is captured and can be measured for monitoring purposes using two bags per trap. This facilitates replacement of the full or partially full bag with an empty one, so that the first bag can be taken off-site for analysis without handling of the material in the field.

The Los Angeles Regional Water Quality Control Board considers such devices as valid monitoring devices for trash load assessment in municipal storm systems, due to ease of maintenance and the ability to relocate devices after a set period at one location, provided the pipe diameters are the same.[11] According to the Los Angeles RWQCB, with limited funding, end-of-pipe nets could be installed over several land uses and lead to valuable monitoring results.

a) Monitoring Locations

End-of-pipe pollutant traps shall be installed at outfalls representative of distinct land uses and catchment sizes. Factors affecting feasibility include accessibility and ability to retrofit the outfall to accommodate installation.

b) Assessment Protocol

Trash shall be quantified by weight and material count from a minimum of three (3) storm events during the 2015/16 wet weather season, and each year thereafter until 2022.

Following each storm event greater than 0.3" in depth, crews of two (2) people shall inspect each capture device, remove the net and replace with an empty net. Removed nets shall be taken to an off-site location where the contents can be emptied and separated into the following categories:

- Leaves and other organic material
- Styrofoam
- Plastic
    - Bottles
    - Bags
    - other
- Paper/cardboard
- Other

Individual pieces of material falling within the categories above shall be counted and weighed. Unit loading rates, based on land area drained to that individual outfall, shall be calculated on a piece of trash/acre and pounds of trash/acre basis.

[11] Refer to technical documentation for the Trash Total Maximum Daily Load (TMDL) for Machado Lake in the Dominguez Channel Watershed, *available at*: www.waterboards.ca.gov/losangeles/board_decisions/basin_plan_amendments/technical_documents/2007-006/07_0607/55_%20StaffRptFinal_072407.pdf.

c) Baseline Schedule

On or before July 1, 2016, Permittees shall develop a baseline load for each monitored outfall, based on a minimum of three (3) monitoring events. Loads for each of the sub-categories identified above (2.b) shall be expressed on a per storm basis, supplemented by information including storm duration, intensity and depth, as well as catchment area draining to the individual outfalls, to generate unit loading rates.

d) On-going Assessment/Compliance Determination

End of pipe pollutant traps shall be retained in place and maintained until 2022. Annual reports shall be submitted to the Regional Board on July 1, 2017 through July 1, 2022. Reports shall include loading data from identical monitoring locations, based on a minimum of three (3) storm events, in the same manner as reported for baseline levels.

3) MANDATORY MINIMUM FULL TRASH CAPTURE SYSTEMS

Permittees shall install and maintain a mandatory minimum number of full trash capture devices, to treat runoff from an area equivalent to 30% of Retail/Wholesale Land that drains to the storm drain system within their jurisdictions. Treatment areas shall be delineated and mapped through GIS.

A full capture system is any single device or series of devices that traps all particles retained by a 5 mm mesh screen and has a design treatment capacity of not less than the peak flow rate resulting from a one-year, one-hour storm in the sub-drainage area. The device(s) must also have a trash reservoir large enough to contain a reasonable amount of trash safely without overflowing trash into the overflow outlet between maintenance events.

a) Demonstration of Trash Reduction Outcomes: Full Trash Capture Systems
    i) Permittees shall maintain, and provide for inspection and review upon request to the Regional Board, documentation of the design, operation, and maintenance of each of their full trash capture systems, including the mapped location and drainage area served by each system;
    ii) The maintenance of each full capture device shall be adequate to prevent plugging, flooding, or a full condition of the device's trash reservoir.
        a. Storm drain inlet type full trash capture devices in Low or Medium trash generation areas shall be maintained a minimum of once per year.
        b. Storm drain inlet type full trash capture devices in High trash generation areas shall be maintained a minimum of twice per year.
        c. Storm drain inlet type full trash capture devices in Very High trash generation areas will be maintained a minimum of 3 times per year.

If any such device is found plugged or full of trash when maintained, the maintenance frequency shall be doubled at a minimum, and subsequently adjusted so that it is maintained frequently enough that it neither plugs nor is full before being maintained;

iii) Permittees shall map and document the catchment area controlled by full trash capture devices;

iv) Permittees shall retain device specific maintenance records, including, at a minimum: the date(s) of maintenance, the capacity condition of the device at the time of maintenance (full and overflowing or with storage capacity remaining), any special problems such as flooding, screen blinding or plugging from leaves, plastic bags, or other debris causing overflow, damage reducing function, or other negative conditions;

v) Other information obtainable from the trash captured, such as brand name litter pointing to a particular source, leading to source control efforts, should be noted. A summary of this information shall be reported in each annual report which will be limited to the number of full capture devices maintained that exhibited a plugged or overflowing condition upon maintenance; and

vi) Permittees shall certify annually that each of their full trash capture systems is operated and maintained to meet full trash capture system requirements.

4) TRASH HOT SPOT SELECTION AND CLEANUP

Trash Hot Spots in receiving waters shall be cleaned annually to achieve the multiple benefits of abatement of impacts as mitigation and to learn more about the sources and transport routes of trash loading.

a) Hot Spot Cleanup and Definition – The Permittees shall clean selected Trash Hot Spots to a level of “no visual impact” at least one time per year for the term of the permit. Trash Hot Spots shall be at least 100 yards of creek length or 200 yards of shoreline length.

b) Hot Spot Selection – Permittees shall maintain the number of trash hot spots identified in the current (2009) permit. Permittees may select new trash hot spot locations if past locations are no longer trash hotspots or if other locations may better align with trash management areas.

c) Hot Spot Assessments – The Permittees shall quantify the volume of material removed from each Trash Hot Spot cleanup and attempt to identify sources to the extent readily feasible. Documentation of the cleanup activity to be retained shall include the trash condition before and after cleanup of the entire hot spot using photo documentation with a minimum of one photo per 100 feet of hot spot length and the total volume of trash and litter removed from the hot spot. Permittees shall report the volume removed for the most recent five years of hot spot cleanup in each annual report, or if a new trash hot spot location is selected, Permittees shall report the volume removed for the years of cleanup

of that hotspot. Trends in removal rates may be considered when accounting for progress toward or attainment of C.10.a. Trash Reduction Requirements.

5) TRASH LOAD REDUCTION PLANS

Permittees shall maintain, and provide for inspection and review upon request, a Trash Load Reduction Plan, including an implementation schedule to meet the C.10.a. Trash Reduction Requirements. A summary of any new revisions to the Trash Load Reduction Plan shall be included in the Annual Report. The Trash Load Reduction Plan shall describe trash load reduction control actions being implemented or planned and the trash generation areas or trash management areas where the actions are or will be implemented, including jurisdiction-wide actions, such as source control ordinances and homeless camp cleanups.

The Trash Load Reduction Plan should also include actions to control sources outside the Permittee's jurisdiction that are causing or contributing to adverse trash impacts in the receiving water(s). Such control actions may account towards meeting the C.10.a. Trash Reduction Requirements as long as Permittees can demonstrate that the controls will be sustained and can quantify the sustained load reduction benefit relative to control actions in the trash generation areas or trash management areas in its jurisdiction that drained to the affected receiving water.

6) REPORTING

Permittees shall provide the following in each Annual Report, due to the Regional Board on July 1 of each year from 2016 to 2022:

a) A summary of trash control actions within each trash management area, including the types of actions, levels of implementation, areal extent of implementation, and whether the actions are ongoing or new, including initiation date;
b) End-of-pipe loads from each monitoring location, as measured in the previous wet-weather season, including a trend analysis compared to baseline (2015/16) levels;
c) Volume and characteristics of trash removed from each of the thirty-two (32) hot spots, including a trend analysis compared to baseline (2015/16) levels;
d) Updated Trash Generation Area map or maps and associated trash management areas including the locations and associated drainage areas of full trash capture systems and non-full trash capture system trash control actions, and the location of Trash Hot Spots, with highlight or other indication of any revisions or changes from the previous year map(s);
e) Certification that each of its full trash capture systems is operated and maintained to meet full trash capture system requirements, and a description of any systems that did not meet full trash capture system requirements, for example due to plugging or overflowing, and corrective actions taken;

f) An accounting of its non-full trash capture system trash management actions, including locations and descriptions of each class of capture system (*e.g.*, watershed cleanups, intensive sweeping, non-full trash capture devices); and

g) An accounting of progress toward or attainment of C.10.a. Trash Reduction Requirements, as assessed through end-of-pipe loading assessments (Section 2). If Permittees cannot demonstrate attainment of a required milestone, it shall submit a detailed Action Plan with the Annual Report, or in advance of the Annual Report, that describes actions designed to achieve compliance with the required milestone, as established in Section 1, Schedule. The plan shall consider the results of full-trash capture monitoring and assessment outcomes to better target additional management actions and inform placement of additional full trash capture systems to attain the milestones. The Action Plan shall be made available for review and comment by Regional Board staff.

July 6, 2015

Mr. Bruce Wolfe
Executive Officer
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

Subject: Comments on the Tentative Order for the Reissued NPDES Stormwater Municipal Regional Permit

Dear Mr. Wolfe:

The City of Belmont appreciates this opportunity to comment on the Tentative Order for the reissued NPDES stormwater municipal regional permit ("MRP 2.0") that was recently released by the San Francisco Bay Regional Water Quality Control Board (Regional Water Board) staff. Our comments reflect the importance of developing permit requirements that are flexible, practical, and cost-effective while meeting the challenges of continuing to protect water quality in our local creeks and San Francisco Bay. Our intent is for these comments to contribute to a constructive dialog that will result in additional permit revisions.

Please note that this letter focuses on our highest priority areas of concern, which are Provisions C.3 (New Development and Redevelopment, especially the Green Infrastructure provision), C.10 (Trash Load Reduction), and C.11/12 (Mercury and PCBs Controls).

C.12. - Belmont #1 – SKM

Of particular concern is that Provision C.12 (PCBs Controls) continues to fall well short of providing Permittees with a clear and feasible pathway to attaining compliance.

Please see the attached for a complete listing of Belmont's concerns regarding these sections.

For detailed comments on other sections of the permit, please refer to the comment letter submitted separately by the San Mateo Countywide Clean Water Program (SMCWPPP).

General – Concur/support and incorporate by reference SMCWPPP's comments – Belmont #2 – SKM

We concur with and support all of SMCWPPP's comments and incorporate them here by reference.

We look forward to continuing to work with you and your staff to resolve the issues described in this letter. Please contact our Public Works Director, Afshin Oskoui at (650) 595-7459 if you have any questions or would like to further discuss any of our comments.

Sincerely,

Mayor

Attach: Attachment No. 1 – Areas of Concern

cc: Belmont City Council

Greg Scoles,City Manager
Afshin Oskoui,Public Works Director

One Twin Pines Lane ● Belmont, CA 94002

ATTACHMENT NO. 1

Areas of Concern-City of Belmont

For each high priority issue that we have identified, a corresponding recommended revision to the Tentative Order is presented below, organized by each provision for which we are providing comments.

C.3- NEW DEVELOPMENT AND REDEVELOPMENT

C.3.b.i. - Belmont #3 – SKM

C.3.b.i- Regulated Projects

Provision C.3.b requires that any Regulated Project that was approved before any C.3 requirements were in effect (i.e., does not have a stormwater control plan) and has not begun construction before MRP 2.0 takes effect must comply with provisions C.3.c and C.3.d (LID treatment and sizing requirements).

- Issue: Permittees do not have the legal authority to impose new requirements on projects with approved entitlements or development agreements, and therefore will face non- compliance with this requirement. Furthermore, it may be difficult for a project to change its site design and layout to accommodate LID treatment measures required by C.3.c and C.3.d.

  Requested Revision: Delete this requirement. It would have minimal water quality benefit and would likely lead to legal battles with developers. Only a small number of projects and a small percentage of impervious surface created/replaced in the region would be subject to this requirement. However, if the requirement remains, then at a minimum include language to allow flexibility in implementation (for example, "provide treatment to the extent feasible" and allow use of media filters) for projects that have prior tentative map approvals or development agreements.

C.3.c.i.(2)(b) - Belmont #4 – SKM

C.3.c.i.(2)- LID Site Design

Permittees are required to collectively develop and adopt design specifications for pervious pavement systems, subject to Executive Officer approval. Countywide program guidance manuals already include pervious pavement specifications.

- Issue: The process for compliance with this provision is unclear (i.e., whether and what type of submittal is required, and by when). In addition, the definition of pervious pavement systems does not include grid pavements (e.g., turf block or plastic grid systems).

  Requested Revision: Allow Permittees to reference a regional or countywide pervious paving specification in their annual reports (including a web link to the document) that meets the intent of this provision. Expand the definition of pervious pavement systems to include grid pavements.

C.3.e.ii.(4) - Belmont #5 – SKM

C.3.e.ii - Special Projects

The Special Projects criteria for LID treatment reduction credits include criteria for density expressed as Floor Area Ratio (FAR)[1] or Dwelling Units (DU) per acre. Both criteria are computed based on the

[1] Floor area ratio is defined as the ratio of the total floor area on all floors of all buildings at a project site (except structures, floors, or floor areas dedicated to parking) to the total project area.

size of the project site. The current permit allows jurisdictions to define FAR and calculate DU/acre consistent with their standard practices. MRP 2.0 prescribes specific definitions for each and requires that they be computed based on the total area of the site (e.g., DU/ac based on gross density). The Permittees requested changes to the definitions as part of early input on the Administrative Draft and the changes were not incorporated.

- Issue: Permittees typically use a definition of gross density that excludes public rights-of-way. Using gross density as defined in the Tentative Order will result in a lower density value that may prevent some valuable high density projects from qualifying for LID treatment reduction credits. Similarly, Permittees would like to exclude public rights-of-way and public plaza areas from the computation of FAR.

  Requested Revision: Change the definitions of FAR and gross density to exclude public plazas, public rights-of-way, and civic areas.

C.3.g.iv. - Belmont #6 – SKM

C.3.g.iv - Hydromodification Management (HM) Standard - Methodology for Direct Simulation of Erosion Potential

The Tentative Order contains similar HM standards and requirements for Permittees to those in the current permit. In addition, the Tentative Order allows the Permittees to collectively propose a method for sizing of HM facilities based on direct simulation of erosion potential, which may allow more efficient facility sizing.

- Issue: The method must be submitted to the Regional Water Board for review and adopted as a permit amendment before it can be applied. This administrative hurdle is unnecessary, as the method is consistent with the current HM standard (and it is the only requirement in the Tentative Order requiring an amendment), and will cause delay and uncertainty as to when the methodology can be used. Also, the provision contains several typos that make the requirements somewhat confusing.

  Requested Revision: Allow Executive Officer approval of the sizing methodology. Correct the following typos:

  - C.3.g.i – Move items (1) through (3) to after the first paragraph in which they are referenced.
  - C.3.g.ii.(3) - change "charges" to "charts" In the first sentence.
  - C.3.g.vii.(S) - delete the last bullet that refers to the Impracticability Provision, which is not included in the Tentative Order.

C.3.h.ii.(7) - Belmont #7 – SKM

C.3.h - Operation and Maintenance of Stormwater Treatment Systems

- Issue: C.3.h.ii.(7) contains requirements for O&M Enforcement Response Plans. Section (c) requires that corrective actions for identified O&M problems with pervious pavement, treatment, and HM systems be implemented within 30 days of identification, and if more than 30 days are required, a rationale must be recorded in the Permittee's inspection tracking database. The process of contacting and educating the property owner, allowing the property owner to arrange for maintenance work to be completed, and following up

[2] Gross density is defined as the total number of residential units divided by the acreage of the entire site area, including land occupied by public rights-of-way, recreational, civic, commercial and other non-residential uses.

with are-inspection typically takes more than 30 days. In the Phase I Manager's early input on the Administrative Draft, a correction period of 90 days was requested, consistent with current practice by some Permittees and some existing maintenance agreements.

Requested Revision: Allow 90 days for completion of permanent corrective actions.

C.3.h.ii.(6)(b) - Belmont #8 – SKM

- Issue: Changes were made to allow Permittee to track inspections by the number of sites instead of numbers of treatment/HM facilities, which was an improvement, but inspection of at least 20% of the total number of Regulated Projects is required each year. Permittees have requested more flexibility around that number while still meeting the requirement of inspection of each site at least once every five years.

  Requested Revision: Change language to require inspection of "approximately 20%" of sites per year. Establish a minimum inspection frequency for each site of every two years.

C.3.h.ii.(6)(b) - Belmont #9 – SKM

In addition, more flexibility needs to be given to those Permittees that only have a small number of sites, so that they do not have to inspect them more frequently than necessary.

Requested Revision: Change language to require inspection of "approximately 20%" of sites per year. Establish a minimum inspection frequency for each site of every two years.

C.3.h. - Belmont #10 – SKM

Also, correct the following typos:

- C.3.h.ii.(7) - begin first sentence with "Permittees shall prepare and maintain..."
- C.3.h.v.(4) - Change "XX" Annual Report to "2017" Annual Report.

C.3.j. - Belmont #11 – SKM

C.3.j - Green Infrastructure Planning and Implementation

This provision will be one of the most challenging portions of C.3 to implement and has a significant level of uncertainty in terms of what will constitute compliance. It also appears that the level of effort and resources required to implement Provision C.3 could be dramatically higher than implementing MRP 1.0 due to the new Green Infrastructure (GI) requirements.

C.3.j.i., C.11, C.12 - Belmont #12 – SKM

Provision C.3.j.i requires each Permittee to develop a GI Plan. The GI Plan must include: mechanism to prioritize and map potential GI project areas; maps and lists generated by this mechanism, for implementation within 2, 7, and 12 years of the Permit effective date; targets for amounts of retrofitted impervious surface within 2, 7, 12, 27, and 52 years; tracking and mapping of installed GI systems; streetscape design and construction details and standards; a list of updates and modifications to existing related Permittee planning documents; and reporting on all of the above elements. Permittees must also prepare and submit annually a list of planned and potential GI proj cts, based on a review of capital improvement projects, and a summary of how each project will include GI to the Maximum Extent Practicable (MEP) or why it was impracticable to implement GI.

- Issue: The language in Provision C.3.j needs to be more consistent with the expectations in Provisions C.11 and C.12 for achieving PCB and mercury load reductions with GI. Discussions with Regional Water Board staff on C.11 and C.12 have suggested that load reductions required by GI over the MRP 2.0 permit term can be accomplished by private development and redevelopment, whereas C.3.j only refers to public retrofits.

  Requested Revision: Make more explicit in C.3.j (as well as in C.11/12) that private development and redevelopment as well as public projects will count toward meeting PCB and mercury load reductions, and that constructed public GI projects within the permit term are not required for compliance with GI pollutant load reductions.

C.3.j.i.(1) – Belmont #13 – SKM

- Issue: Developing a comprehensive GI Plan will take time and significant resources, and the timeframes in the Tentative Order for completion of the Plan are unrealistic. For example, the framework for the GI Plan has to be developed and approved by local governing bodies or city/county managers within one year of the Permit effective date. This is a very short timeframe given the effort required to coordinate and educate internal departments, educate upper level staff and elected officials, prepare the framework, conduct resource planning, and accommodate lead times for bringing the framework to governing bodies. Additionally, the GI Plan must be completed and submitted with the 2019 Annual Report (three and one-half years from the expected Permit effective date). Completing a GI Plan will be a complex and time-intensive process that will require a great deal of municipal interdepartmental coordination and resources. Prioritization and mapping of potential and planned projects may not be able to be completed within two years of the Permit effective date.

  Requested Revision: Provide additional time to complete and obtain governing body approval of the GI framework; e.g. extend the deadline to the required reporting date of September 15, 2017. Provide the entire permit term to complete the GI Plan. Eliminate the two-year deadline to complete prioritization, mapping, and begin implementation of planned/potential projects (before the GI Plan is completed), and include these efforts in the GI Plan development period.

C.3.j.i.(1)(a) – Belmont #14 – SKM

- Issue: Prioritization and mapping of potential and planned projects will be a major, resource-intensive effort, especially for those smaller jurisdictions that do not have GIS data layers already available. Additional flexibility in approaches to mapping and prioritization is needed. In addition, the time intervals for planning should be aligned with fiscal years, and made consistent with the time intervals for load reductions in C.11/12.

  Requested Revision: The mechanisms used to develop the GI Plan and priorities should include other less complex tools in addition to the GreenPlan-IT tool. The time intervals should be changed to FY 19-20, FY 24-25, and FY 29-30 (to align with C.11/12 load reduction reporting intervals of 2020 and 2030).

C.3.j.i.(1)(c) – Belmont #15 – SKM

- Issue: Provision C.3.j.i(1)(c) requires Green Infrastructure Plans to include "targets for the amount of impervious surface within the Permittee's jurisdiction to be retrofitted" within 2, 7, 12, 27, and 52 years of the Permit effective date. It is unclear how these "targets" are to be established by each Permittee. In addition, the timeframes for establishing "targets" (we would prefer the term "projections") for the amount of impervious surface retrofitted do

not line up with the C.11/12 load reduction timeframes, making it difficult to calculate projected load reductions.

Requested Revision: Allow the development of "projections" instead of "targets", and allow Permittees to include projected private development as well as public projects. Allow projections to be developed for the years 2020, 2030, 2040, and 2065, consistent with C.11/12 and with other municipal planning documents.

C.3.j.ii. – Belmont #16 – SKM

- Issue: Provision C.3.j.ii requires early implementation of GI, focused on identifying and implementing public projects that have potential for GI measures (including LID treatment) within the permit term. It is unclear how compliance with this section will be determined. The process for review of planned capital projects needs to be more defined and objective, in order to avoid disagreements with Regional Water Board staff as to what are "missed opportunities". There also needs to be the recognition that while it may be technically feasible to add LID features to a capital project, the funding for the additional features and the ongoing maintenance of the LID features may not be available. Implementation {i.e., design and construction) during the Permit term of GI projects that are not already planned and funded will be very challenging for most Permittees.

  Requested Revision: Efforts during the MRP 2.0 term should focus on development of long-term GI Plans and opportunistic implementation of GI projects where feasible and where funding is available. Add language proposed by the Permittees as early input to the Administrative Draft Permit (as shown in the footnote below[3]) that would allow for consistent review of capital projects for GI opportunities, based on specified criteria.

C.10 - TRASH LOAD REDUCTION

C.10.a.i. – Belmont #17 – SKM

C.10.a.i - Trash Reduction Requirement Schedule

- Issue: Reductions become increasingly more challenging the closer Permittees move towards the trash reduction goal of *fino* adverse impacts". Provision C.10.a.i (Schedule) requires a 70% load reduction by 2017. This schedule is too rigorous and should be extended to allow for more time to develop/implement sustainable control measures. Most of the areas remaining to address are moderate trash generating areas and willing likely require more innovative controls that will have to be piloted.

  Requested Revision: We request that the 70% load reduction time schedule, set for 2017 in the Tentative Order, be extended at least to 2018.

C.10.a.ii. – Belmont #18 – SKM

C.10.a.ii.b – Trash Generation Area Management (Private Drainage Areas)

- Issue: Provision C.10.a.ii.b (Trash Generation Area Management) requires Permittees to map and assess ALL private drainages 5,000 *fe* and greater, determine the level of trash present in these areas, and ensure that no further actions are needed. The intent of mapping these drainages is unclear. Mapping would require a significant undertaking that would result in minimal water quality benefit. Ensuring that private drainages are at a "low" trash generation level does not require mapping. Areas can be identified by modifying existing municipal inspection programs already in place.

Requested Revision: We request that the mapping requirement be removed from this provision. As an alternative, Permittees should be required to: 1) identify high priority areas that generate moderate, high or very high levels of trash and are plumbed directly to their strom drain systems, and 2) cause these areas to be managed to a level equivalent to the performance of a full capture system or to a low trash generation level.

[3] Proposed language: "Permittees shall review and analyze appropriate projects within the Permittee's capital improvement program, and for each project, assess the opportunities and associated costs of incorporating UD into the project. The analysis shall consider factors such as grading and drainage, pollutant loading associated with adjacent land uses, uses of available space with the project area, condition of existing infrastructure, opportunities to achieve multiple benefits such as providing aesthetic and recreational resources, and potential availability of incremental funding to support LID elements along with other relevant factors... Permittees will collectively evaluate and develop guidance on the criteria for determining practicability of incorporating green infrastructure measures into planned projects.n

C.10.a.iii. – Belmont #19 – SKM

- Issue: Throughout the Bay Area thousands Green Infrastructure (C.3 compliant) facilities have been constructed on properties over the last 10+ years. These facilities were designed consistent with the new and redevelopment requirements and perform at a level similar to typical trash full capture systems. These systems have been designed to prevent flooding and effectively remove pollutants from stormwater. Provision C.10.a.iii {Mandatory Minimum Full Trash Capture Systems) currently requires Permittees to install a screen {Smm) to the overflow pipes of all Green Infrastructure facilities before these devices can be considered full capture systems. Screening the overflow pipes would be out of the scope of the municipality's authority, as nearly all treatment facilities are privately owned and maintained. Additionally, adding screens to existing facilities would have unknown effects to the performance of these systems and would likely increase the maintenance and flooding if retrofitted with screens. The Water Board to reconcile this issue. The requirements for the sizing and design of green infrastructure facilities are now well established. Requiring modifications to these designs for trash just doesn't make sense. The Water Board established provisions requiring these facilities based on their ability to remove pollutants attached to small particles less 0.1mm in size, but is now requiring modifications for trash items that are at least 20 times greater in size? Trash items ARE effectively removed by these facilities without modification.

  Requested Revision: We request that the Water Board removed the requirement for "screening" all Green Infrastructure treatment facilities installed and maintained consistent with provision C.3 and in the Permit deem that these facilities are equivalent to full capture systems.

C.10.b.i.a. – Belmont #20 – SKM

C.10.b.i.a - Maintenance (of Full Trash Capture Systems)

- Issue: Provision C.10.b.i.a (Maintenance of Full Capture Systems) currently requires maintenance of small capture devices based on the level of trash generated in the surrounding area. Maintenance frequencies based on trash generation is inconsistent with the experience and knowledge of Permittees. Maintenance frequencies are site specific and are mostly affected by the amount of vegetative material (typically comprising over 85% of the debris captured by a device) that reaches the device and the size of the inlet vault, not the amount of trash generated in the surrounding area.

  Requested Revision: As an alternative to arbitrary maintenance frequencies we request that the TO be revised to require Permittees to develop and implement Permittee-specific maintenance programs to achieve/maintain full capture criteria. Permittees would then report on the implementation of their maintenance programs, adaptation of these programs and any issues that need to be addressed. Tailoring maintenance programs to maintenance needs of specific devices is the only way to ensure adequate maintenance of these devices into the future.

C.10.b.iv. – Belmont #21 – SKM

C.10.b.iv - Source Controls

The most important actions that can be taken by Permittees are those that eliminate the generation of litter prone items in perpetuity. Bay Area Permittees have been national leaders on taking actions to eliminate the sale or distribution of liter prone items. Nearly every Permittee in the Bay Area has adopted an ordinance focused at eliminating certain types of trash in our creeks and the Bay. These

actions took significant politicalsupport,public resources and were done in partnership with environmental NGOs.

- Issue:Permittees to-date have focused on a instituting a number of different types of source control actions. Data collected by Permittees indicated that each individual action reduces between 5 and 10% of the trash found in stormwater on average. These reductions are likely not observed by visualassessment protocols because they are only precise enough to detect reductions greater than 25%. Therefore,without a specific reduction value for source controls, reductions associated with these actions may never be valued.

  The maximum of 5% reduction for all source control actions arbitrary and inconsistent with our currently knowledge of the percentage of trash in stormwater associated with specific litter-prone items associated with source controlactions. The programs put into place to address these litter prone items are effective and directly impact stormwater quality.

  Requested Revision: We request that the TO be revised to increase the maximum reduction value for all source control actions combined to 25%. Supporting evidence would be required to claim reductions associated with source controls.

C.10.b.v. – Belmont #22 – SKM

C.lO.b.iv - Receiving Water Observations

- Issue:The TO requires the Permittees conduct receiving water observations downstream from trash generation areas converted to "low" trash generation.By requiring Permittees to focus on areas downstream of controlactions,appears that receiving water observations could be used to judge compliance with reductions associated with municipal stormwater. Confusing, because the process to judge compliance with stormwater reductions is outlined in the TO-full capture,visualassessments,source controlvalues,and offsets associated with cleanups.

  We are supportive of an ambient monitoring program that would continue to evaluate trash conditions or levels in localcreeks and rivers using a cost-effective and practical protocol. This protocol,however,has not yet been developed.

  Requested Revision:We request that the TO language be revised to state that purpose of receiving water observations is "...to evaluate the level of trash present in receiving waters over time,and to the extent possible determine 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)." Additionally,we are willing to be a partner with the Water Board and NGOs in developing and pilot-testing a protocol during the permit term to achieve this purpose.

C.10.e.i. – Belmont #23 – SKM

C.lO.e.i– OptionalTrash Load Reduction Offset Opportunities - Creek and Shoreline Cleanups

Creek and shoreline cleanups are important actions that promote community involvement, create awareness of trash issues,and improve water quality. These actions have water quality value, are supported by the community and environmental NGOs,and should be accounted for accordingly in the load reduction accounting method.

- Issue: While we appreciate the inclusion of load reduction benefits associated with creek and shoreline cleanups, the 5% maximum offset for these important actions is too small and inconsistent with the environmental benefit. Additionally, the arbitrary 10:1 ratio of trash removed to offset value is too large and under values the benefits of these actions.

  The requirement for a minimum cleanup frequency of 2x/year at each specific site creates inflexibility and is too constraining. Some Permittees may choose to cleanup many sites b./year rather than a small number of sites 2x/year. What's important is that trash is being removed from creeks and shorelines, not how many times at a specific site.

  Requested Revision: We request that the TO be revised to:

  - Increase the maximum offset for creek and shoreline cleanups to 10%;
  - Reduce the ratio of trash removed to reduction value to 3: 1, similar to other types of mitigation programs; and,
  - Remove the requirement that a site be cleanup at least 2x/year before claiming an offset.

C.10.e.ii. – Belmont #24 – SKM

C.10.e.i- Optional Trash Load Reduction Offset Opportunities- Direct Discharge Trash Controls

This offset is intended to address trash impacts associated with non-stormwater pathways to creeks and rivers such as illegal dumping directly into water bodies. These pathways directly impact water bodies and at some sites serve as the dominant source of trash. Programs that address trash from direct discharges should be accounted for accordingly in the load reduction accounting method.

- Issue: While we appreciate the inclusion of load reduction benefits associated with direct dumping, the 10% maximum offset for these important programs is too low and inconsistent with the environmental benefit of these programs. Additionally, the arbitrary 10:1 ratio of trash removed to offset value is too large and under values the benefits of these actions. Lastly, Permittees post-2016 may identify direct discharges as an important source of trash to receiving waters and therefore the 2016 Annual Report should not be the only timeframe when Permittees can submit a plan to address these sources.

  Requested Revision: We request that the TO be revised to:

  - Increase the maximum offset for programs addressing direct discharges to 25%; and,
  - Reduce the ratio of trash removed to reduction value to 3:1, similar to other types of mitigation programs.
  - Allow for submittals of plans to control direct discharges post-2016.

C.10.f. – Belmont #25 – SKM

C.10.f- Reporting

- Issue: Compliance with NPDES permits is determined by the Water Board. Provision C10.f.v.b requires the Permittees to "submit a report of non-compliance" if It cannot demonstrate the attainment of 70% reduction, which therefore assumes that compliance determinations are made by the Permittee.

Requested Revision: We request that the Water Board revise this provision to require that a Permittee that cannot demonstrate a 70% reduction, "submit a report and updated long-term Trash load Reduction Plan that describes actions to comply with the mandatory deadlines in a timely manner..."

C.11. – Belmont #26 – SKM

C.11 - MERCURY CONTROLS

Provisions C.11.a-c in the Tentative Order generally parallel C.12.a-c. Therefore, the below comments on those provisions for C.12 (PCBs Controls) also generally apply to C.11 (Mercury Controls).

C.12. – General – Belmont #27 – SKM

C.12 PCBs CONTROLS

PCBs are a highly persistent (i.e., slow to degrade) legacy pollutant that have been in San Francisco Bay for decades and likely will remain in the Bay for decades to come. Over the past 15 years, Bay Area municipalities in collaboration with the Regional Monitoring Program (RMP) have conducted extensive field studies and gained considerable knowledge about the distribution of PCBs in the Bay Area environment. Due to widespread uses and lack of regulation over many decades (i.e., 1930s - 1970s), this pollutant was widely dispersed in soils and sediments throughout the urban landscape draining to the Bay. Similarly, PCBs *are* widely dispersed within the Bay's sediments.

Bay Area municipalities have also made a great deal of progress over the past 15 years towards understanding the types of control measures that are most cost-effective in reducing PCBs discharges in stormwater. Although this evaluation of controls is ongoing, no controls identified to-date are particularly cost-effective, apart from the 1979 ban by USEPA on PCBs manufacture, import, export, and distribution in commerce in the United States. The ban represented effective "true source control" but came much too late to have prevented the widespread distribution of PCBs into the urban landscape and the Bay. With further true source control generally not an option, the current challenges in addressing PCBs are not surprising.

Extensive source property identification programs led by Bay Area municipalities have identified a small number of PCBs "hot spots" in watersheds across the Bay Area. These hot spots are mostly associated with properties that are currently under cleanup orders from the Regional Water Board, EPA, or DTSC, or are currently permitted by these agencies or could be in the future. These sites are generally outside of the control of local agencies.

It may also be possible to reduce PCBs discharges in stormwater over the next few decades by requiring (as the permit does now through provision C.3) stormwater treatment on private properties as they are redeveloped. Retrofitting of landscape-based treatment structures (e.g., "Green Streets") into the public right-of-way is another approach that provides multiple benefits, but is highly resource and time intensive. Planning for a long-term (i.e., decadal) program to retrofit such Green Infrastructure into the urban landscape has been incorporated into the Tentative Order, but implementation will mostly occur during future permit terms and require several decades.

Additionally, although highly uncertain, there may be opportunities to prevent future contamination as buildings containing PCBs that were constructed during the 1950s - 1970s are demolished. However, the rate at which buildings are demolished and redevelopment occurs, and therefore the timeframe for reduction of PCBs associated with these sources and areas, is generally out of the control of local agencies.

This lack of control over redevelopment and demolition, and the unknowns about the extent and magnitude of additional "hot spots" creates a high level of uncertainty in the level of implementation that cities and counties can commit to during the next five year permit term. In turn, the uncertainty in implementation creates compliance uncertainty when compliance targets in the permit include assumptions regarding the rate of redevelopment and demolition.

Provision C.12 of the Tentative Order uses a framework that is a hybrid of two approaches, requiring: 1) BMP implementation and 2) pollutant load reduction. The required BMPs are Green Infrastructure and managing PCBs-containing materials and wastes during building demolition activities. However, it appears that the primary intent is to require Permittees to demonstrate a total cumulative Bay Area-wide PCBs load reduction of 3 kg/year over the permit term. Our overarching concern is that Provision C.12 continues to fall well short of providing Permittees with a clear and feasible pathway to attaining compliance with this load reduction requirement.

It is also important to note that the level of effort and associated resources required to implement Provision C.12 as set forth in the Tentative Order is highly uncertain. Much of the cost of implementing PCBs control programs during the current permit term was offset by a grant from USEPA that will end in 2016. The availability of grant or other funding for implementing Provision C.12 of the reissued permit is unknown. As a starting point, making all of the below recommended revisions would result in much greater certainty regarding the level of effort and associated resources that would be required to comply with Provisions C.12, and create a much clearer pathway towards complying with the MRP.

C.12.a. – Belmont #28 – SKM

C.12.a – Implement Control Measures to Achieve Load Reductions

The Tentative Order appears to require Permittees to reduce PCBs loads to the Bay by 3 kg/year by the end of the permit term. The approach includes developing an accounting system for Executive Officer approval early in the permit term that would form the basis for the load reductions credited to the various PCBs controls.

- Issue: There is a lack of a clear and feasible pathway for Permittees to attain compliance with the load reduction requirements. Most factors that would be key to meeting the criteria are uncertain and many are not within Permittee control (e.g., extent of source properties that will be found, building demolition rates, and redevelopment rates), making achievement of compliance uncertain.

  Requested Revision: load reduction performance criteria should not be the point of compliance. Compliance should be based upon implementing PCBs control programs designed to achieve a load reduction target (such as a Numeric Action level or similar mechanism for triggering requirements for additional action and reporting), based on an interim accounting method {see next section). The target would be informed by what the BMP programs could achieve, based on the accounting system, which would agree upon upfront and incorporated into the permit.

C.12.a. – Belmont #29 – SKM

- Issue: The schedule for the following reporting requirements in Provision C.12.a. is unrealistic.
  - Provision C.12.a.iii.(l}- February 1, 2016 report providing "a list of watersheds (or portions therein) where PCBs control measures are currently being implemented and those in which control measures will be implemented (C.12.a.ii.(l}) during the term of this permit as well as the monitoring data and other information used to

select the watersheds."

- Provision C.12.a.iii.(2)- 2016 Annual Report providing "the specific controlmeasures (C.12.a.ii.(2)) that are currently being implemented and those that will be implemented in watersheds identified under C.12.a.iii.(1) and an implementation schedule (C.I2.a.ii.(3)) for these controlmeasures. This report shall include:.... [scope,start dates, progress milestones, schedules,roles and responsibilities of Permittees,etc...]...."

Requested Revision:Extend the deadlines for the above reports to the 2017 AnnualReport.

C.12.b. – Belmont #30 – SKM

C.12.b.Assess Load Reductions from Stormwater

SMCWPPP,other countywide stormwater programs, and Regional Water Board staff recently worked together to develop an interim accounting method. It was intended to provide a basis for stipulated load reduction benefits for implementation of the primary PCBs control programs that Permittees anticipate implementing during the MRP 2.0 permit term (this interim accounting method would be revised before the next permit term). We appreciate that Regional Water Board staff included much of the information developed for the interim accounting method in the fact sheet.

- Issue:Values for certain key accounting parameters for managing PCBs-containing materials and wastes during building demolition activities were left out.

  Requested Revision:Include in the interim accounting method values for all parameters to allow for scrutiny during the public permit review process,given the uncertainty in these values. It is especially important to include values for all parameters associated with managing PCBs-containing materials and wastes during building demolition activities, including the fraction of PCBs mass in a building that enters the MS4 during demolition in the absence of enhanced controls,which is particularly uncertain. Stormwater programs can also provide similar values for mercury to include in the fact sheet as well.

C.12.b.iii. – Belmont #31 – SKM

- Issue:Requirement to formally submit load reduction assessment methodology early in the permit term for Executive Officer approvalcreates uncertainty in the load reduction benefit for each PCBs control program.

  Requested Revision:Omit the requirement to submit load reduction accounting method early in the permit term. Instead,the interim accounting method should be finalized, incorporated into the permit,and then used to calculate PCBs load reductions during Permittee annual reporting.

C.12.a. & c. – Belmont #32 – SKM

- Issue: Water Board staff has acknowledged that load reduction performance criteria are not numeric effluent limits.This should be made clear in the permit.In addition,further clarity is needed regarding the legaldefinition of the performance criteria and implications with regard to enforcement and potential third party lawsuits.

  Requested Revision: PCBs load reduction performance criteria should be in the form of Numeric Action Levels or a similar mechanism for triggering requirements for additional action and reporting. In addition,the permit should include contingency language that would allow for achieving compliance if a good-faith demonstration of efforts and actions by

Permittees consistent with permit requirements falls short of achieving the load reduction performance criteria.

C.12.b.iii. – Belmont #33 – SKM

- Issue: Provision C.12.b.iii requires that Permittees submit Permittee-specific proportions of load reduction responsibilities and supporting data to the Water Board by April 1, 2016 - four months after the effective date of the permit. Although Permittees and the RMP have spent considerable time and resources towards identifying PCB hot spots and watersheds producing greater levels of PCBs to the Bay, data have not been collected at a level to which proportions of load reduction responsibilities could confidently be assigned to Permittees. Furthermore, assigning Permittee-specific responsibilities with high levels of uncertainty upon which compliance could be based is not good public policy and could inadvertently unduly place responsibilities upon certain Permittees requiring the spending of public resources towards fictitious goals not based in reality.

  Requested Revision: Delete requirement to develop and submit Permittee-specific proportions of load reduction responsibilities.

C.12.c. – Belmont #34 – SKM

C.12.c - Plan and Implement Green Infrastructure to Reduce PCBs loads

Provision C.12.c of the Tentative Order requires Permittees to implement Green Infrastructure projects during the term of the permit to achieve PCBs load reductions of 120 gfyear over the final three years of the permit term. Additionally, Permittees are required to prepare a reasonable assurance analysis to demonstrate quantitatively that PCB load reductions of at least 3 kg/yr throughout the Permit area will be achieved by 2040 through implementation of Green Infrastructure plans required by Provision C.3.j.

- Issue: It is unnecessary to include performance criteria for PCBs load reductions through implementation of Glover the reissued permit term. PCBs load reductions will not be the driver for Gl implementation during the reissued permit term. Regional Water Board staff has noted that based on extrapolation of data from the current permit term, the proposed metrics should be met via redevelopment in old industrial areas. Thus the proposed criteria would not influence Gl implementation during the reissued permit term and meeting them would instead be dependent upon an activity that is not under Permittee's control. While we expect to learn valuable lessons via opportunistic early implementation of Gl retrofit projects through Provision C.3.j.ii, the pollutant load reductions associated with these retrofits implemented over MRP 2.0 is anticipated to be relatively small.

  Requested Revision: Provision C.12. c should be deleted.

C.12.c. – Belmont #35 – SKM

- Issue: It does not make sense to prejudge that PCBs load reductions of at least 3 kg/yr throughout the Permit area should be achieved by 2040 through implementation of Green Infrastructure plans. The actual load reductions that Permittees expect to achieve via Green Infrastructure will be determined during the planning and reasonable assurance analysis required by Provision C.12.d., as part of planning for achieving the overall PCBs TMDL allocations.

  Requested Revision: Provision C.12. c should be deleted.

C.12.f. – Belmont #36 – SKM

C.12.f. Manage PCB-containing Materials and Wastes during Building Demolition

Provision C.12.f requires development of a program to manage PCBs in building materials and wastes during demolition. Given the large standing stock of PCBs known to be present in certain buildings in the Bay Area, there could potentially be significant benefits to implementing the proposed control program. However, we are not aware that any data exist regarding the amount of PCBs-containing materials that are released to the ground during demolition and then mobilized into the MS4 by urban runoff, making it challenging to project with any certainty the actual water quality benefit of the proposed control program. Cost-effectiveness relative to other PCBs controls is also highly uncertain at this time.

- Issue: The various potential problems associated with PCBs in building materials (i.e., water quality, human exposure at the site, and disposal) should be addressed holistically on a statewide or federal basis rather than focusing on water quality controls in the Bay Area only. Meeting the Tentative Order's three year timeframe to develop a program to manage PCBs in building materials and wastes during demolition would likely require administration at the local level. This inappropriate and rushed approach would result in highly inefficient use of scarce public funds and likely be ineffective at comprehensively addressing the problems. It would also likely result in inconsistent programs across the Bay Area.

  Recommended Solution: Allow at a minimum the entire permit term for Permittees to work with the State, USEPA, the building industry, and other stakeholders to attempt to develop a comprehensive statewide or federal program analogous to current programs for asbestos and lead paint. Given the multiple environmental and public health issues in play, USEPA should play a large role in development of this program.

Department of Public Works
Engineering Division

July 10, 2015

Dr. Thomas Mumley
Regional Water Quality Control Board, San Francisco Bay Region
1515 Clay Street, Suite 1400
Oakland, CA 94612

Subject: NPDES Permit No. CAS612008, CITY OF BERKELEY COMMENTS ON TENTATIVE ORDER

Dear Dr. Mumley:

By email dated May 11, 2015, the Water Board indicated it would accept written comments on the Draft Municipal Regional Stormwater Permit (Draft MRP) until 5 pm on July 10, 2015. It was requested that written comments be submitted to the following email address: mrp.reissuance@waterboards.ca.gov. and that all attachments to the email should be submitted as one electronic file with a file name clearly identifying the commenting entity. In response to this Water Board notice, I am filing these comments on behalf of the Alameda Countywide Clean Water Program (ACCWP) with attachments in the form requested.

Thank you for the opportunity to file these comments- we appreciate all the time that you and your staff have taken to meet with us and other MS4s in an attempt to reach agreement on this very complex next phase of the MRP. Our comments on the highest priority issues are below.

General – Berkeley #1 - STL

Additional specific comments on these and other provisions are included in the attached table.

Provision C.12: Polychlorinated Biphenyls (PCBs) Control

Provision C.12.a. – Berkeley #2 - STL

Provision C.12.a: The 0.5 kg/yr and 3.0 kg/yr PCB load reduction performance criteria should be removed.

1) There is no reasonable certainty regarding the ability of best management practices (BMPs) to meet the proposed load reduction performance criteria. The Fact Sheet acknowledges that achievement of the performance criteria is speculative at this stage of load reduction methodology, and describes a default approach to estimating load

reductions resulting from foreseeable control measures implemented during the permit term. Most of the BMPs evaluated during MRP 1 that were thought to have promise turned out to have very limited load reduction benefits. For example, it was thought that enhanced street sweeping and drop inlet cleaning, and diversion of stormwater flows to sanitary sewers, would be able to achieve significant reductions in PCB loads. Further study during MRP 1 has determined that this is not the case.

Provision C.12.a. – Berkeley #3 - STL

Only two BMPs as more fully discussed below currently appear to have the potential to significantly reduce PCB loads: source property identification and remediation, and managing PCB containing waste during building demolition. However, lack of reliable data and Permittees' inability to control all aspects of implementation mean there is no certainty that the stipulated load reductions could be achieved.

Provision C.12.a. – Berkeley #4 - STL

Source Property Identification and Remediation: Through previous investigations, Permittees have identified several sites in old industrial areas with significant PCB contamination. Based upon this finding, we are currently conducting a screening of all old industrial parcels throughout the County, and conducting PCB analysis of sediment adjacent to the sites that appear to have the highest likelihood of being a PCB source property. Through this process we may find some sites that are significant sources of PCBs. However, the number of sites will probably be relatively low, and it will be difficult or impossible to develop an accurate estimate of the annual load of PCBs from these sites in advance of their investigation and remediation under the direction of appropriate state and federal agencies.

Provision C.12.a. – Berkeley #5 - STL

Managing PCB Containing Building Demolition Waste: There are significant quantities of legacy PCBs in certain buildings (an estimated 4.7 kg average in 1950 to 1980 masonry/concrete structures), but the amount of PCBs released to the storm drain system during demolition is completely unknown. Permittees have conducted an extensive literature review in an effort to develop a reasonable estimate. There is very little published data, a wide range of estimates that rely on personal judgment for key assumptions, and no studies of PCBs released from building demolition to storm water runoff. Developing an accurate estimate within several months (April 2016) or even several years is infeasible given the wide variation from site to site in the mass of PCB containing hazardous waste, the concentration of PCBs, the types of waste, the type and size of structure, the control BMPs implemented, and the type of demolition. The proposed 3 kg/yr load reduction relies heavily on the assumed load reduction from managing building demolition waste. This assumption is unfounded and cannot form the basis for a regulatory PCB load reduction requirement.

Provision C.12.a. – Berkeley #6 – STL

2) The Draft Permit states that Permittees need to develop an allocation scheme or the default will be by population. Neither option is feasible. There are several problems with developing an alternative load allocation among Permittees in addition to the unrealistic timeframe (i.e., April
2016): (1) There is no legally binding mechanism to reallocate loads; and (2) Permittees whose allocation would rise under an alternative allocation could not agree to a higher allocation and put their jurisdiction in jeopardy of non-compliance when there is no certainty regarding meeting the target. A population-based allocation is not feasible as some of our newer cities (e.g., Dublin, Pleasanton, Livermore, Fremont) have relatively large populations and very little old industrial or old urban (pre-1980) development and therefore, very little opportunity for PCB reduction credit through either building demolition (C.12.f) or Green Infrastructure implementation (C.12.c).

Provision C.12.a. – Berkeley #7 – STL

3) PCB load reductions are not required by the PCB TMDL. The TMDL Implementation Plan states that PCB reductions should be evaluated after 10 years (i.e., 2020). In 2020, after MRP 2 requirements have been completed, we will have a much better understanding of what can be achieved and through which combination of control measures and will have provided updates to the initial load estimation methodologies. Load reduction targets could then be set at that time.

Provision C.12.a. – Berkeley #8 – STL

The permit needs to provide Permittees with a clear and feasible path to achieving compliance based on implementation of PCB control programs described in C.12 that can realistically be planned and completed during the permit term. Therefore, the load reduction targets should be removed, especially the 0.5 kg/yr criterion for the second year of the permit, which is unnecessary and burdensome.

Provision C.12.a. – Berkeley #9 – STL

If the 3.0 kg/yr performance criterion for the permit term is retained, it should be explicitly stated in the form of an action level to avoid any confusion between the permit's performance metrics and effluent limits; clarifying this legal definition has important implications for enforcement and the risk of potential third party lawsuits. Also, the Permit Fact Sheet should fully describe the default interim accounting method for all of the proposed PCB control measures.

Provision C.12.b. – Berkeley #10 – STL

Provision C.12.b: Revise documentation approach for interim load estimation methodology, if submittal is required allow at least twelve months after the permit adoption, especially if documentation of load estimation methodology is required.

The Permit notes that the "full description of measurement and estimation methodology"

required in this provision is intended as a documented version of the default interim method in the Fact Sheet, applicable to this permit term. In conjunction with the above requested changes in C.12.a, this submittal should be deleted as unnecessary, since a description of a permanent method will be provided before the end of the permit per Provision C.12.b.iii(3). If numeric load reduction targets are retained, the Fact Sheet should document all of the parameters and assumptions involved in this method, which BASMAA representatives provided to Water Board staff in summary form.

Provision C.12.f. – Berkeley #11 – STL

Provision C.12.f: Managing PCBs waste in building demolitions should be part of a comprehensive federal and State effort to close gaps in the existing regulatory structure, and recognize limits to Permittee jurisdiction.

1) Permittees are willing to partner with other agencies in this effort but cannot be the leads for implementing necessary upgrades or interpretations to federal and state PCB regulations. The Draft Permit recognizes that working with state and federal agencies is necessary to create a coordinated program for management of PCB-containing building materials, like those successfully implemented for asbestos or lead-based paint. ACCWP Permittees and other municipalities collaborated with the San Francisco Estuary Partnership's PCBs in Caulk Project, which identified gaps in existing information and regulatory approaches to PCBs in existing buildings. Permittees can encourage proponents ofdemolition projects to abate PCB containing materials in accordance with existing regulations but cannot pre-empt or anticipate future federal and state regulations.

Provision C.12.f. – Berkeley #12 – STL

2) Discussions with Water Board staff indicate that USEPA Region 9 contacts overseeing PCB clean-ups will not commit to timely review or response of proposed abatement plans for projects with PCB-containing building materials, if Permittees were to require documentation of abatement plan submittal to USEPA prior to issuing demolition permits. Such uncertainty would expose the projects to highly uncertain time and cost impacts.

Provision C.12.f. – Berkeley #13 – STL

3) The Fact Sheet lacks clarity regarding the default assumptions used to estimate potential load reductions associated with this provision, which are subject to especially large uncertainties due to lack of published data on release to runoff of PCBs in building materials or from qemolition activities. USEPA has not shared results of recent clean-ups or research which would inform updated guidance and best practices, nor made any statements on whether demolition activities will be addressed in its PCB rulemaking process (originally announced in 2010).

Provision C.12.f. – Berkeley #14 – STL

Permit language should recognize that a truly comprehensive framework will take longer

than 3 years and that Permittees have no control over the participation or action timelines of federal, state or regional agencies.

Provision C.10. – Berkeley #15 – STL

Provision C.10. Trash Load Reductions

1) The schedule for meeting the 70% and 100% trash reduction targets should be extended.

The City has made a great deal of progress over the last 5 years in trash load reductions. However, the MS4s are still determining which BMPs are most effective as reductions are often variable and difficult to quantify. Therefore, informed decisions regarding the most effective expenditure of public funds cannot be made until more certainty regarding which BMPs will lead to full compliance. For example, through the Capturing California Trash Grant, BASMM is conducting a study to determine if retractable drop inlet screens in combination with frequent street sweeping has a comparable effectiveness to full trash capture devices. If the BASMM study shows full trash capture equivalence, using inlet screens in combination with street sweeping may be a more efficient approach to compliance due to reduced maintenance cost or they could be used in areas where full trash capture systems cannot be installed.

Provision C.10. – Berkeley #16 – STL

Another reason to extend the compliance dates is that many of the highest trash problem areas are along Caltrans roadways. Permittees have existing maintenance agreements with Caltrans for many portions of Caltrans roadways. Caltrans has a stormwater permit requiring similar trash load reductions, and Caltrans is interested in partnering with Permittees to revise maintenance agreements and share in the cost of installation and maintenance of full trash capture devices along its roadways. Caltrans has until 2025 to meet its reduction targets under the Caltrans statewide permit. Given the differences in the timelines in the Tentative Order and the Caltrans permit, this makes it difficult to partner and collaborate with Caltrans on trash load reduction in this region and places and unfair burden on the City.

Provision C.10. – Berkeley #17 – STL

The reduction targets should be changed to July 1, 2020 for a 70% reduction and July 1, 2025 for 100% reduction. These are still extremely aggressive targets. A useful comparison are the State's requirements for reducing solid waste to landfills under AB939. AB 939 was passed in 1989 and required a 50% reduction in waste within 11 years (2000). As with trash, it was very difficult to establish a baseline even though the solid waste stream is much easier to measure than litter in the environment. Local and regional jurisdictions are now (26 years later) trying to achieve a 75% reduction. In addition, waste management agencies are not subject to the same funding constraints as stormwater programs are under Prop 218.

Provision C.10. – Berkeley #18 – STL

Smaller, less-urbanized jurisdictions should more easily be able to achieve the reductions under the extended schedule. However, for larger and more heavily trash-impacted jurisdictions it may be impossible to achieve required reductions even within the extended timeframe. This revised schedule would also line up with Caltrans' schedule and make it much easier to coordinate with Caltrans.

Provision C.10.b.iv – Berkeley #19 – STL

2) Source Control (C.10.b.iv): The maximum offset allowed for source control actions should be expanded.

The Alameda Countywide Storm Drain Trash Monitoring and Characterization Project already done by the ACCWP demonstrated an 8% reduction from existing source control actions. Existing source control actions could be enhanced to reduce trash further, and additional source control actions could be developed. In addition, source control is much more effective and efficient approach to reducing pollution as compared to removing pollutants once they are in the environment. The permit needs to encourage these source control efforts by increasing the maximum offset to at least 15%.

Provision C.10.c.i – Berkeley #20 – STL

3) Additional Creek and Shoreline Cleanup (C.10.c.i): The cap on the maximum offset should be increased.

Municipalities spend a tremendous amount of resources to clean up trash from in and around local creeks and the Bay shoreline. This trash is directly impacting local waterways. However, the trash is often deposited along these waterways through mechanisms other than discharge from the municipal storm drain system. Cleanup efforts are often the most effective approach to reducing trash impacts to waterways, and these efforts should be encouraged. The maximum offset should be increased.

Provision C.10. – Berkeley #21 – STL

4) Visual Assessments should not be used to determine compliance.

The Visual Assessment Protocol has not been vetted sufficiently to be used as a Permit compliance tool: 1) The temporal and spatial variation is not well understood or quantified; 2) There is an element of subjectivity to the assessments that cannot be eliminated; 3) The definitions of generation rate categories (i.e., Very High, High, Moderate, and Low) are too broad to detect actual trash reductions in many cases; and, 4) How to account for random variation from one assessment to the next has not been determined. Conducting resource intensive visual on-land assessments is also very time consuming and takes very limited resources away from actual trash reduction efforts that directly improve water quality. Visual assessments should be used for only qualitative assessment during this permit term.

Provision C.10. – Berkeley #22 – STL

5) The requirement to map all private property down to 5,000 sq. ft. in moderate or higher trash generation areas should be deleted.

This mapping requirement will require a tremendous effort without any clear benefit. It is often nearly impossible to determine how storm drains are plumbed at older developments. Maps of these private storm drain systems are often non-existent or inaccurate. The requirement creates a situation that will lead private property owners to believe that the City is responsible for their private drainage. This requirement should be deleted.

Provision C.10.b.v – Berkeley #23 – STL

6) The Receiving Water Observations requirement (C.10.b.v) should be removed.

Conducting receiving water observations is another requirement that will take significant resource without any clear benefit and will result in the diversion of resources from trash reduction efforts. No protocols have been established and there is tremendous variation in the amount of trash from site to site and over time depending on the timing and size of storm events. It is not clear that the data produced from this effort could guide future management actions.

Provision C.10.b.v – Berkeley #24 – STL

Through the Capturing California Trash Grant, BASMAA is working with Algalita to develop a protocol for sampling and quantifying trash discharged during storm events. This requirement should be removed from this permit and reconsidered for the next permit once the protocol has been developed.

Provision C.3.j.i. – Berkeley #25 – STL

Provision C.3.j. Green Infrastructure

1) The schedule for developing the Green Infrastructure framework (C.3.J.i) should be extended to 24 months from the Permit effective date.

The new Green Infrastructure approach and requirements are very comprehensive, will require significant financial resources, and will require in-depth discussion and planning efforts by local agencies over upcoming years. The new Green Infrastructure Plan could cost between $300,000 and $500,000 for the City of Berkeley to prepare. This new requirement will reduce funding available for construction of Green Infrastructure. Specifically, based on the city of Berkeley's experience to date, the preparation of the plan will result in the elimination of two to four plant based green infrastructure sites throughout the City that would have otherwise been built. These efforts will significantly affect many areas of municipal government. Stated differently, this will be a major commitment for Permittees extending many years into the future.

Provision C.3.j.i. – Berkeley #26 – STL

It should be assumed that most Permittees will need to have the framework approved by their governing bodies rather than the city or county manager. The requirements of the framework are extensive. Developing a framework for approval by a governing body will require significant time and resources, and coordination and cooperation among various agencies with often conflicting priorities and constraints. The schedule for completion must be extended to 24 months from the Permit adoption.

Provision C.3.j.1.g. – Berkeley #27 – STL

2) Provide more flexibility for sizing treatment controls at road projects (C.3.j.1.g.).

Provision C.3.j.1.g requires public projects (e.g., roadway projects) to meet the C.3.d sizing criteria. The C.3.d. sizing requirement generally requires that the treatment system is about 4% of the area draining to the treatment system, has a minimum infiltration rate of 5 inches per hour, and has a specified type and depth of soil and gravel. As was learned through the Green Streets pilot projects required under the current permit, that standard is often impossible to achieve.

Provision C.3.j.1.g. – Berkeley #28 – STL

Roadway retrofit treatment projects are often highly constrained due to competing needs for space for pedestrian and bicycle traffic, Americans with Disabilities Act (ADA) compliance, as well as underground utilities. There is also often a large amount of runoff from adjacent private parcels that cannot be limited or diverted. The minimum 5 inch per hour infiltration rate will also preclude the planting of trees in the treatment area as trees need a slower draining soil (e.g., 3 to 4 inches per hour). Trees are an extremely desirable species to include in their green streets projects, and the City should be able to include tree wells within their treatment calculations. The requirement to meet the C.3.d sizing criteria is an undue cost burden on the City, EBMUD, PG&E, Comcast, AT&T and other utility companies due to the competing needs and underground congestion. The added utility coordination can double the City's design and construction management costs, extend .project delivery times, and cause other underground utilities to relocate their facilities. We have not seen evidence that outreach to the Water Board outreaching to other utilities to solicit their input on impacts to their infrastructure and operations. We believe outreach to other agencies and companies is important and needs to be done to create a functional permit and weigh the impact to society. The requirement to meet the C.3.d sizing criteria will often not be possible to meet.

Provision C.3.j.1.g. – Berkeley #29 – STL

Greater flexibility should be included in the permit. The allowance for all Permittees to provide a single alternative approach is not feasible as local conditions and constraints vary among jurisdictions and across the region. At a minimum the provision should be revised to allow countywide programs to submit alternative approach.

General – Reporting – Berkeley #30 – STL

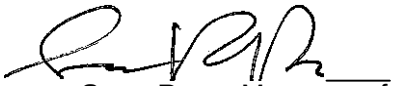
Reporting

Reporting on 2 permits in one Annual Report is difficult and confusing. Many permit requirements are based on implementing requirements on a July 1 through June 30 implementation schedule. If a new permit with revised annual requirements becomes effective after July 1, it's not clear what portion of, if any, of those annual requirements needed to be implemented during the less than one year period of the old and new permit. To avoid this problem, make the effective date of the new permit July 1, 2016. The schedule for completion dates could take into account the Permit adoption date as Permit adoption provides certainty.

General – No commitment for new requirements – Berkeley #31 – STL

It should be noted that these comments are provided solely to assist the Water Board's consideration of and potential reaction to concepts or language it may, in its discretion, elect to advance relative to the reissuance of the Municipal Regional Permit for stormwater discharges. It is not intended and should not be misconstrued as an offer to take on, or volunteer for, any potential permit requirement that represents a new program or higher level of service relative to the MRP or its predecessor permits.

Sincerely,



Sean Rose, Mana er of Engineering

cc: Jim Scanlin, Alameda Countywide Clean Water Program

THE CITY OF BRENTWOOD
HERITAGE • VISION • OPPORTUNITY

MAILING ADDRESS:
City Hall
150 City Park Way
Brentwood, CA 94513
Phone: 925-516-5400
Fax: 925-516-5401
www.brentwoodca.gov

ADMINISTRATIVE SERVICES
150 City Park Way
Phone: 925-516-5460
Fax: 925-516-5401

CITY MANAGER
150 City Park Way
Phone: 925-516-5440
Fax: 925-516-5441

COMMUNITY DEVELOPMENT
150 City Park Way
Phone: 925-516-5405
Fax: 925-516-5407

PARKS AND RECREATION
35 Oak Street
Phone: 925-516-5444
Fax:925-516-5445

POLICE
9100 Brentwood Boulevard
Phone: 925-634-6911
24 Hr. Dispatch: 925-778-2441
Fax:925-809-7799

PUBLIC WORKS

Operations Division
2201 Elkins Way
Phone: 925-516-6000
Fax: 925-516-6001

Engineering Division
150 City Park Way
Phone: 925-516-5420
Fax: 925-516-5421

July 7, 2015

Bruce Wolfe, Executive Officer
California Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay Street
Oakland, CA 94612
Via email to: mrp.reissuance@waterboards.ca.gov

Subject: Opposition to the Tentative Order Reissuing the Municipal Regional Stormwater Permit (MRP 2.0)

Dear Mr. Wolfe and members of the Board:

Thank you for the opportunity to comment on the Tentative Order Reissuing the Municipal Regional Stormwater Permit ("MRP 2.0"). The City of Brentwood continues to support the Water Board's objectives of reducing stormwater pollution and protecting local creeks, the Delta and San Francisco Bay.

For the past two years, representatives from Contra Costa municipalities, along with a consortium of Bay Area agencies and Bay Area Stormwater Management Agencies Association ("BASMAA"), have been engaged in an ongoing dialogue with your staff for the issuance of MRP 2.0, so that the requirements contained in MRP 2.0 provide for a clear path to compliance.

Despite the extensive effort made by the above listed agencies, few suggestions were carried forward into the draft Tentative Order. Therefore, the City of Brentwood ("City") opposes the Tentative Order as written; and asks that your Board consider the following comments, and direct Water Board staff to work with Permittees to revise the Tentative Order.

General – New mandates are expensive and difficult – Brentwood #1 - REL

Major New and Expanded Mandates Should Be Offset by Eliminating Less Beneficial Tasks

The draft Tentative Order includes a new mandate to develop Green Infrastructure Plans. This multi-year plan represents a significant paradigm shift and is impossible to implement due to right-of-way constraints and existing utilities. It will also require significant investment on the part of all Permittees.

In addition, the draft Tentative Order would require the City to do the following:

Assess each planned infrastructure project and add Green Infrastructure features where feasible;

Plan and implement a program to manage PCB-containing materials in commercial and industrial structures constructed or remodeled between 1950 and 1980 at the time those structures are demolished;

Demonstrate trash load reductions of 70% from 2009 levels - up from the current 40% requirement - by installing full trash capture devices or implementing equivalent trash control measures and evaluating their effectiveness through visual surveys;

- Require private property owners in high-trash and moderate-trash areas to install full trash capture devices or implement equivalent measures;

- Requires Pre-2005 approved projects to comply with Low Impact Development Standards ("LIDs"). Once the Tentative Map is approved for these projects, the City does not have legal authority to require a developer to install LIDs in these projects.

These major new and expanded mandates will require a major expense, sustained effort to implement, and no additional capital or ongoing maintenance funding has been identified for this purpose.

C.12 - Pathway to compliance – demolition uncertainty – Brentwood #2 – REL

Permittees Must Have a Clear Path to Compliance

Considerable time and effort has been spent discussing how to reduce levels of pollutants of concern flowing into waterways, particularly PCBs. Failure to achieve the reductions specified in the Draft Tentative Order could result in the City being held in noncompliance. However, as drafted, the Tentative Order provides no clear path for Permittees to avoid noncompliance. Some examples include:

The draft Tentative Order mandates achieving specified reductions in the total quantity of PCBs discharged from municipal storm drains. A major means of achieving these reductions is through removal of PCBs during building demolitions. However this fails to acknowledge that Permitees have no control over timing of when properties redevelop.

C.12 - Pathway to compliance – demolition program development – Brentwood #3 – REL

The City ask that development of a *program to control PCBs during building demolitions, rather than applying controls to* a *specified number of buildings demolished, should represent compliance with this requirement.*

C.12 - Pathway to compliance – general – Brentwood #4 – REL

The Tentative Order includes (in the Fact Sheet) an incomplete method to achieve stipulated reduction credits for each building demolished with PCB controls, for each redeveloped site with new bioretention facilities, and for finding and abating concentrated sources of PCBs. Looking for hidden PCB sources is a good idea, but Permittees can't guarantee that they will find them and be able to abate them.

The City ask that development of a *program to systematically identify and review potential sources, and refer them to appropriate agencies for abatement, should be the basis for credit toward compliance.*

C.12 – Pathway to compliance - Finalize PCBs Accounting Scheme in Permit – Brentwood #5 – REL

- The draft Tentative Order allows only four (4) months after Permit adoption for Permittees to submit a more complete "measurement and estimation methodology and rationale" for stipulating PCB reduction credits.

  The City ask that BASMAA's PCBs programs accounting methodology be finalized, incorporated into the permit, and then used to calculate PCBs load reductions during Permittee annual reporting.

C.12 – Pathway to compliance - numeric load reduction criteria for permit compliance – Brentwood #6 – REL

Water Board staff has stated the threat of noncompliance is intended to strongly encourage Permittees to find and abate hidden PCBs, and that Water Board staff would use "enforcement discretion" if and when Permittees are unable to meet the mandated PCB load reductions. From a municipal government perspective, new financial and staffing commitments must be based on agreed upon goals and objectives, and have well-defined metrics for measuring progress.

The City ask that the load reduction performance criteria not be the point of compliance, and that Water Board staff work with Permittee representatives to revise the Draft Tentative Order so that it provides a clear and feasible pathway for Permittees to attain compliance. Most factors that are key to meeting the load reduction performance criteria are uncertain and many are not within Permittee control (e.g., extent of source properties that will be found, building demolition rates, and redevelopment rates), making achievement of compliance uncertain.

The City of Brentwood appreciates the efforts by your staff to develop permit requirements that are implementable and effective in improving surface water quality - a goal which we share. The City looks forward to resolution of the remaining issues and to implementing the updated permit.

Sincerely,

Gustavo "Gus" Vina
City Manager

cc: Bailey Grewal, City of Brentwood, Director of Public Works/City Engineer

CITY OF BRISBANE
Department of Public Warks
50 Park Place Brisbane,
CA 94005-1310 (415)
508-2130

July 2, 2015

Mr. Bruce Wolfe
Executive Officer
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

Subject: Comments on Tentative Order for Reissued NPDES Stormwater Municipal Regional Permit

Dear Mr. Wolfe:

The City of Brisbane appreciates this opportunity to comment on the Tentative Order for the reissued NPDES stormwater municipal regional permit ("MRP 2.0") that was recently released by the San Francisco Bay Regional Water Quality Control Board (Regional Water Board) staff. Our comments reflect the importance of developing permit requirements that are flexible, practical, and cost-effective while meeting the challenges of continuing to protect water quality in our local creeks and San Francisco Bay. Our intent is for these comments to contribute to a constructive dialog that will result in additional permit revisions.

Please note that this letter focuses on our highest priority areas of concern, which are Provisions C.3 (New Development and Redevelopment, especially the Green Infrastructure provision), C.10 (Trash Load Reduction), and C.11/12 (Mercury and PCBs Controls).

C.12. - Brisbane #1 – SKM

Of particular concern is that Provision C.12 (PCB Controls) continues to fall well short of providing Permittees with a clear and feasible pathway to attaining compliance. Please see the below sections for more details.

General – Concur/support and incorporate by reference SMCWPPP's comments – Brisbane #2 – SKM

For detailed comments on other sections of the permit, please refer to the comment letter submitted separately by the San Mateo Countywide Clean Water Program (SMCWPPP). We concur with and support all of SMCWPPP's comments and incorporate them here by reference.

C.3- NEW DEVELOPMENT AND REDEVELOPMENT

C.3.b.i. - Brisbane #3 – SKM

C.3.b.i- Regulated Projects

Provision C.3.b requires that any Regulated Project that was approved before C.3 requirements were in effect (i.e., does not have a stormwater control plan} and has not begun construction before MRP 2.0 takes effect, must comply with provisions C.3.c and C.3.d (LID treatment and sizing requirements).

- Issue: The City Attorney has opined that we do not have the legal authority to impose new requirements on projects with approved entitlements or development agreements, and

therefore will face non-compliance with this requirement. Furthermore, it may be difficult for a project that has already received approvals and conformed its site layout to

city zoning requirements, to change its site design and layout after approval to accommodate LID treatment measures required by C.3.c and C.3.d.

Requested Revision: Delete this requirement. It would have minimal water quality benefit and would likely lead to legal battles with developers. Only a small number of projects and a small percentage of impervious surface created/replaced in the region would be subject to this requirement. However, if the requirement remains, then at a minimum include language to allow flexibility in implementation (for example, "provide treatment to the extent feasible" and allow use of media filters) for all projects that have prior approved discretionary planning entitlements.

C.3.j.i., C.11, C.12 - Brisbane #4 – SKM

C.3.j - Green Infrastructure Planning and Implementation

Provision C.3.j.i requires each Permittee to develop a GI Plan. The GI Plan must include: mechanism to prioritize and map potential GI project areas; maps and lists generated by this mechanism, for implementation within 2, 7, and 12 years of the Permit effective date; targets for amounts of retrofitted impervious surface within 2, 7, 12, 27, and 52 years; tracking and mapping of installed GI systems; streetscape design and construction details and standards; a list of updates and modifications to existing related Permittee planning documents; and reporting on all of the above elements. Permittees must also prepare and submit annually a list of planned and potential GI projects, based on a review of capital improvement projects, and a summary of how
each project will include GI to the Maximum Extent Practicable (MEP) or why it was impracticable to implement GI.

- Issue: The language in Provision C.3.j needs to be consistent with the expectations in Provisions C.11 and C.12 for achieving PCB and mercury load reductions with GI. Discussions with Regional Water Board staff on C.11 and C.12 have suggested that load reductions required by Glover the MRP 2.0 permit term can be accomplished by private development and redevelopment, whereas C.3.j only refers to public retrofits.

  Requested Revision: Make more explicit in C.3.j (as well as in C.11/12) that private development and redevelopment as well as public projects will count toward meeting PCB and mercury load reductions, and that constructed public GI projects within the permit term are not required for compliance with GI pollutant load reductions.

C.3.j.i. – Brisbane #5 – SKM

- Issue: Developing a comprehensive GI Plan will take time and significant resources, and the timeframes in the Tentative Order for completion of the Plan are unrealistic. For example, the framework for the GI Plan has to be developed and approved by local governing bodies or city/county managers within one year of the Permit effective date. This is a very short timeframe given the effort required to coordinate and educate internal departments, educate upper level staff and elected officials, prepare the framework, conduct resource planning, and accommodate lead times for bringing the framework to governing bodies. Additionally, the GI Plan must be completed and submitted with the 2019 Annual Report (three and one-half years from the expected Permit effective date). Completing a GI Plan will be a complex and time-intensive process that will require significant municipal interdepartmental coordination and resources. Prioritization and mapping of potential and planned projects may not be able to be

completed within two years of the Permit effective date.

Requested Revision: Provide additional time to complete and obtain governing body

approval of the GI framework; e.g. extend the deadline to the required reporting date of September 15, 2017. Allow the entire permit term to complete the GI Plan. Eliminate the two-year deadline to complete prioritization, mapping, and initiate implementation of planned/potential projects (before the GI Plan is completed), and include these efforts in the GI Plan development period.

C.3.j.i.(1)(a) – Brisbane #6 – SKM

- Issue: Prioritization and mapping of potential and planned projects will be a major, resource-intensive effort, especially for those smaller jurisdictions that do not have GIS data layers already available. Additional flexibility in approaches to mapping and prioritization is needed. In addition, the time intervals for planning should be aligned with fiscal years, and made consistent with the time intervals for load reductions in C.11/12.

  Requested Revision: The mechanisms used to develop the GI Plan and priorities should include other less complex tools in addition to the GreenPlan-IT tool. The time intervals should be changed to FY 19-20, FY 24-25, and FY 29-30 (to align with C.11/12 load reduction reporting intervals of 2020 and 2030).

C.3.j.i.(1)(c) – Brisbane #7 – SKM

- Issue: Provision C.3.j.i(l)(c} requires Green Infrastructure Plans to include "targets for the amount of impervious surface within the Permittee's jurisdiction to be retrofitted" within 2,7, 12,27, and 52 years of the Permit effective date. It is unclear how these "targets" are to be established by each Permittee. In addition, the timeframes for establishing "targets" (we would prefer the term "projections"} for impervious surface retrofitted do not line up with the C.11/12load reduction timeframes, making it difficult to calculate projected load reductions.

  Requested Revision: Allow the development of "projections" instead of "targets", and allow Permittees to include projected private development as well as public projects. Allow projections to be developed for the years 2020, 2030, 2040, and 2065, consistent with C.11/12 and with other municipal planning documents.

C.3.j.ii. – Brisbane #8 – SKM

- Issue: Provision C.3.j.ii requires early implementation of GI, focused on identifying and implementing public projects that have potential for GI measures (including LID treatment} within the permit term. It is unclear how compliance with this section will be determined. The process for review of planned capital projects needs to be more defined and objective, to avoid future disagreements with Regional Water Board staff as to what are "missed opportunities". There also needs to be recognition that while it may be technically feasible to add LID features to a capital project, the funding for the additional features and the ongoing maintenance of the LID features may not be available. Implementation (i.e., design and construction} during the Permit term of GI projects that are not already planned and funded will extremely challenging for most Permittees.

  Requested Revision: Efforts during the MRP 2.0 term should focus on development of long-term GI Plans and opportunistic implementation of GI projects where feasible and where funding is available. Add language proposed by the Permittees as early input to the Administrative Draft Permit (as shown in the footnote below [1]} that would allow for

[1] Proposed language: "Permittees shall review and analyze appropriate projects within the Permittee's capital improvement program, and for each project, assess the opportunities and associated costs of incorporating LID into the project. The analysis shall consider factors such as grading and drainage, pollutant loading associated with adjacent land uses, uses of available space with the project area, condition of existing infrastructure, opportunities to achieve multiple benefits such as providing aesthetic and recreational resources, and potential availability of incremental funding to support LID elements

consistent review of capital projects for GI opportunities, based on specified criteria.

C.10- TRASH LOAD REDUCTION

C.10.a.ii. – Brisbane #9 – SKM

C.10.a.ii.b-Trash Generation Area Management (Private Drainage Areas)

- **Issue:** Provision C.10.a.ii.b (Trash Generation Area Management) requires Permittees to map and assess ALL private drainages 5,000 ft^2 and greater, determine the level of trash present in these areas, and ensure that no further actions are needed. Mapping would require a significant undertaking that would result in minimal water quality benefit. Ensuring that private drainages are at a "low" trash generation level does not require mapping. Areas can be identified by modifying existing municipal inspection programs already in place.

  Requested Revision: Remove the mapping requirement from this provision. As an alternative, Permittees should be required to: 1) identify high priority areas that generate moderate, high, or very high levels of trash and are plumbed directly to their storm drain systems, and 2) cause these areas to be managed to a level equivalent to the performance of a full capture system or to a low trash generation level.

C.10.a.iii. – Brisbane #10 – SKM

- **Issue:** Throughout the Bay Area, thousands of Green Infrastructure (C.3 compliant) facilities have been constructed on properties over the last 10+ years. These facilities were designed consistent with the new and redevelopment requirements and perform at a level similar to typical trash full capture systems. These systems have been designed to prevent flooding and effectively remove pollutants from stormwater. Provision C.10.a.iii (Mandatory Minimum Full Trash Capture Systems) currently requires Permittees to install a screen (5mm) to the overflow pipes of all Green Infrastructure facilities before these devices can be considered full capture systems. Screening the overflow pipes would be out of the scope of the municipality's authority, as nearly all treatment facilities are privately owned and maintained. Additionally, adding screens to existing facilities would have unknown effects to the performance of these systems and would likely increase the maintenance and flooding if retrofitted with screens. The requirements for the sizing and design of green infrastructure facilities are now well established. The Water Board previously established provisions requiring these facilities based on their ability to remove pollutants attached to small particles less than 0.1mm in size, but is now requiring modifications for trash items that are at least 20 times greater in size. Trash items ARE effectively removed by these existing facilities without modification.

  Requested Revision: Remove the requirement for "screening" all Green Infrastructure treatment facilities installed and maintained consistent with provision C.3, and in the Permit deem that these facilities are equivalent to full capture systems.

C.10.b.i.a. – Brisbane #11 – SKM

C. 0.b.i.a – Maintenance (of Full Trash capture Systems)

- **Issue:** Provision C.10.b.i.a (Maintenance of Full Capture Systems) currently requires maintenance of small capture devices based on the level of trash generated in the surrounding area. Maintenance frequencies based on trash generation is inconsistent

with the experience and knowledge of Permittees. Maintenance frequencies are site

along with other relevant factors... Permittees will collectively evaluate and develop guidance on the criteria for determining practicability of Incorporating green infrastructure measures into planned projects."

specific and are mostly affected by the amount of vegetative material (typically comprising over 85% of the debris captured by a device) that reaches the device and the size of the inlet vault, not the amount of trash generated in the surrounding area.

Requested Revision: Revise the TO to require Permittees to develop and implement Permittee-specific maintenance programs to achieve/maintain full capture criteria. Permittees would then report on the implementation of their maintenance programs, adaptation of these programs and any issues that need to be addressed. Tailoring maintenance programs to local maintenance needs of specific devices is the only way to ensure adequate maintenance of these devices into the future.

C.10.b.iv. – Brisbane #12 – SKM

C.lO.b.iv - Source Controls

The most important actions that can be taken by Permittees are those that eliminate the generation of litter prone items in perpetuity. Bay Area Permittees have been national leaders on taking actions to eliminate the sale or distribution of liter prone items. Nearly every Permittee in the Bay Area has adopted an ordinance focused at eliminating certain types of trash in our creeks and the Bay. These actions took significant political support, public resources and were done in partnership with environmental NGOs.

- **Issue:** Permittees to-date have focused on instituting a number of different types of source control actions. Data collected by Permittees indicated that each individual action reduces between 5 and 10% of the trash found in stormwater on average. These reductions are likely not observed by visual assessment protocols because they are only precise enough to detect reductions greater than 25%. Therefore, without a specific reduction value for source controls, reductions associated with these actions may never be valued.

  The maximum of 5% reduction for all source control actions is arbitrary and inconsistent with our current knowledge of the percentage of trash in stormwater associated with specific litter-prone items associated with source control actions. The programs put into place (such as the Trash Container Management Policy required in the solid waste franchise agreements negotiated between the city and private haulers) to address these litter prone items are effective and directly impact stormwater quality.

  Requested Revision: Revise the TO to increase the maximum reduction value for all source control actions combined to 25%. Supporting evidence would be required to claim reductions associated with source controls.

C.10.f. – Brisbane #13 – SKM

C.lO.f- Reporting

- **Issue:** Compliance with NPDES permits is determined by the Water Board. Provision ClO.f.v.b requires the Permittees to "submit a report of non-compliance" if it cannot demonstrate the attainment of 70% reduction, which therefore assumes that compliance determinations are made by the Permittee.

  Requested Revision: Revise this provision to require that if a Permittee cannot demonstrate a 70% reduction, "submit a report and updated Long-term Trash Load Reduction Plan that describes actions to comply with the mandatory deadlines in a timely

manner..."

C.11. – Brisbane #14 – SKM

C.11- MERCURY CONTROLS

Provisions C.11.a-c in the Tentative Order generally parallel C.12.a-c. Therefore, the below comments on those provisions for C.12 (PCBs Controls) also generally apply to C.11(Mercury Controls).

C.12. – General – Brisbane #15 – SKM

C.12- PCBs CONTROLS

PCBs are a highly persistent legacy pollutant that have been in San Francisco Bay for decades and likely will remain in the Bay for decades to come. Over the past 15 years,Bay Area municipalities in collaboration with the Regional Monitoring Program (RMP) have conducted extensive field studies and gained considerable knowledge about the distribution of PCBs in the Bay Area environment. Due to widespread uses and lack of regulation over many decades (i.e.,1930s-1970s),this pollutant was widely dispersed in soils and sediments throughout the urban landscape draining to the Bay. Similarly, PCBs are widely dispersed within the Bay"s sediments.

Bay Area municipalities have also made a great deal of progress over the past 15 years towards understanding the types of control measures that are most cost-effective in reducing PCBs discharges in stormwater. Although this evaluation of controls is ongoing,no controls identified to-date are particularly cost-effective,apart from the 1979 ban by USEPA on PCBs manufacture,import,export, and distribution in commerce in the United States. The ban represented effective "true source control" but came much too late to have prevented the widespread distribution of PCBs into the urban landscape and the Bay. With further true source control generally not an option,the current challenges in addressing PCBs are not surprising.

Extensive source property identification programs led by Bay Area municipalities have identified a small number of PCB "hot spots" in watersheds across the Bay Area. These hot spots are mostly associated with properties that are currently under cleanup orders from the Regional Water Board, EPA,or DTSC,or are currently permitted by these agencies or could be in the future. These sites are generally outside of the control of local agencies.

It may also be possible to reduce PCB discharges in stormwater over the next few decades by requiring (as the permit does now through provision C.3) stormwater treatment on private properties as they are redeveloped. Retrofitting of landscape-based treatment structures (e.g.,"Green Streets") into the public right-of-way is another approach that provides multiple benefits,but is highly resource and time intensive. Planning for a long-term (i.e.,decadal) program to retrofit such Green Infrastructure into the urban landscape has been incorporated into the Tentative Order,but implementation will mostly occur during future permit terms and require several decades.

Additionally,although highly uncertain,there may be opportunities to prevent future contamination as buildings containing PCBs that were constructed during the 1950s -1970s are demolished. However,the rate at which buildings are demolished and redevelopment occurs,and therefore the timeframe for reduction of PCBs associated with these sources and areas, is generally out of the control of local agencies.

This lack of control over redevelopment and demolition,and the unknowns about the extent and magnitude of additional"hot spots" creates a high level of uncertainty in the level of implementation that cities and counties can commit to during the next five-year permit term. In turn,the uncertainty in implementation creates compliance uncertainty when compliance targets in the permit include

assumptions regarding the rate of redevelopment and demolition.

Provision C.12 of the Tentative Order uses a framework that is a hybrid of two approaches, requiring: 1) BMP implementation and 2} pollutant load reduction. The required BMPs are Green Infrastructure and managing PCB-containing materials and wastes during building demolition activities. However, it appears that the primary intent is to require Permittees to demonstrate a total cumulative Bay Area-wide PCBs load reduction of 3 kg/year over the permit term. Our overarching concern is that Provision C.12 continues to fall well short of providing Permittees with a clear and feasible pathway to attaining compliance with this load reduction requirement.

It is also important to note that the level of effort and associated resources required to implement Provision C.12 as set forth in the Tentative Order is highly uncertain. Much of the cost of implementing PCBs control programs during the current permit term was offset by a grant from USEPA that will end in 2016. The availability of grant or other funding for implementing Provision C.12 of the reissued permit is unknown. As a starting point, making all of the below recommended revisions would result in much greater certainty regarding the level of effort and associated resources that would be required to comply with Provisions C.12, and create a much clearer pathway towards complying with the MRP.

C.12.a. – Brisbane #16 – SKM

C.12.a - Implement Control Measures to Achieve Load Reductions

The Tentative Order appears to require Permittees to reduce PCBs loads to the Bay by 3 kg/year by the end of the permit term. The approach includes developing an accounting system for Executive Officer approval early in the permit term that would form the basis for the load reductions credited to the various PCBs controls.

- Issue: There is a lack of a clear and feasible pathway for Permittees to attain compliance with the load reduction requirements. Most factors that would be key to meeting the criteria are uncertain and many are not within Permittee control (e.g., extent of source properties that will be found, building demolition rates, and redevelopment rates), making achievement of compliance uncertain.

  Requested Revision: Load reduction performance criteria should not be the point of compliance. Compliance should be based upon implementing PCB control programs designed to achieve a load reduction target (such as a Numeric Action Level or similar mechanism for triggering requirements for additional action and reporting), based on an interim accounting method (see next section). The target would be informed by what the BMP programs could achieve, based on the accounting system, which should be agreed upon upfront and incorporated into the permit.

C.12.a. – Brisbane #17 – SKM

- Issue: The schedule for the following reporting requirements in Provision C.12.a. is unrealistic.
  - Provision C.l2.a.iii.(l) – February 1, 2016 report providing "a list of watersheds (or portions therein) where PCB control measures are currently being implemented and those in which control measures will be implemented (C.12.a.ii.(l)) during the term of this permit as well as the monitoring data and other information used to select the watersheds."
  - Provision C.12.a.iii.(2) - 2016 Annual Report providing "the specific control measures (C.12.a.ii.(2)) that are currently being implemented and those that will

be implemented in watersheds identified under C.12.a.iii.(l)and an implementation schedule (C.12.a.ii.(3)) for these control measures. This report

shall include:... [scope, start dates, progress milestones, schedules, roles and responsibilities of Permittees, etc...]...".

Requested Revision: Extend the deadlines for the above reports to the 2017 Annual Report.

C.12.b. – Brisbane #18 – SKM

C.12.b Assess Load Reductions from Stormwater

SMCWPPP, other countywide stormwater programs, and Regional Water Board staff recently worked together to develop an interim accounting method. It was intended to provide a basis for stipulated load reduction benefits for implementation of the primary PCB control programs that Permittees anticipate implementing during the MRP 2.0 permit term (this interim accounting method would be revised before the next permit term). We appreciate that Regional Water Board staff included much of the information developed for the interim accounting method in the fact sheet.

- Issue: Values for certain key accounting parameters for managing PCB-containing materials and wastes during building demolition activities were left out.

  Requested Revision: Include in the interim accounting method values for all parameters to allow for scrutiny during the public permit review process, given the uncertainty in these values. It is especially important to include values for all parameters associated with managing PCB-containing materials and wastes during building demolition activities, including the fraction of PCB mass in a building that enters the MS4 during demolition in the absence of enhanced controls, which is particularly uncertain. Stormwater programs can also provide similar values for mercury to include in the fact sheet as well.

C.12.b.iii. – Brisbane #19 – SKM

- Issue: Requirement to formally submit load reduction assessment methodology early in the permit term for Executive Officer approval creates uncertainty in the load reduction benefit for each PCB control program.

  Requested Revision: Omit the requirement to submit load reduction accounting method early in the permit term. Instead, the interim accounting method should be finalized, incorporated into the permit, and then used to calculate PCB load reductions during Permittee annual reporting.

C.12.a. & c. – Brisbane #20 – SKM

- Issue: Water Board staff has acknowledged that load reduction performance criteria are not numeric effluent limits. This should be made clear in the permit. In addition, further clarity is needed regarding the legal definition of the performance criteria and implications with regard to enforcement and potential third party lawsuits.

  Requested Revision: PCB load reduction performance criteria should be in the form of Numeric Action Levels or a similar mechanism for triggering requirements for additional action and reporting. In addition, the permit should include contingency language that would allow for achieving compliance if a good-faith demonstration of efforts and actions by Permittees consistent with permit requirements falls short of achieving the load reduction performance criteria.

C.12.b.iii. – Brisbane #21 – SKM

- Issue: Provision C.12.b.iii requires that Permittees submit Permittee-specific proportions of load reduction responsibilities and supporting data to the Water Board by April 1, 2016 -four months after the effective date of the permit. Although Permittees and the RMP have spent considerable time and resources towards identifying PCB hot spots and

watersheds producing greater levels of PCBs to the Bay, data have not been collected at a level to which proportions of load reduction responsibilities could confidently be assigned to Permittees. Furthermore, assigning Permittee-specific responsibilities with high levels of uncertainty upon which compliance could be based is not good public policy and could mistakably place responsibilities upon certain permittees requiring the spending of public resources towards fictitious goals not based in reality.

Requested Revision: Delete requirement to develop and submit Permittee-specific proportions of load reduction responsibilities.

C.12.c. – Brisbane #22 – SKM

C.12.c.Plan and Implement Green Infrastructure to Reduce PCBs Loads

Provision C.12.c of the Tentative Order requires Permittees to implement Green Infrastructure projects during the term of the permit to achieve PCBs load reductions of 120 g/year over the final three years of the permit term. Additionally, Permittees are required to prepare a reasonable assurance analysis to demonstrate quantitatively that PCB load reductions of at least 3 kg/yr throughout the Permit area will be achieved by 2040 through implementation of Green Infrastructure plans required by Provision C.3.j.

- Issue: It is unnecessary to include performance criteria for PCB load reductions through implementation of Glover the reissued permit term. PCB load reductions will not be the driver for GI implementation during the reissued permit term. Regional Water Board staff has noted that based on extrapolation of data from the current permit term, the proposed metrics should be met via redevelopment in old industrial areas. Thus, the proposed criteria would not influence GI implementation during the reissued permit term and meeting them would instead be dependent upon an activity that is not under Permittee's control. While we expect to learn valuable lessons via opportunistic early implementation of GI retrofit projects through Provision C.3.j.ii, the pollutant load reductions associated with these retrofits implemented over MRP 2.0 is anticipated to be relatively small.

  Requested Revision: Delete Provision C.12.c.

C.12.c. – Brisbane #23 – SKM

- Issue: We are unaware of empirical evidence that leads to a prejudgment that PCB load reductions of at least 3 kg/yr throughout the Permit area could be achieved by 2040 through implementation of Green Infrastructure plans. The actual load reductions that Permittees expect to achieve via Green Infrastructure will be determined during the planning and reasonable assurance analysis required by Provision C.12.d., as part of planning for achieving the overall PCBs TMDL allocations.

  Requested Revision: Delete Provision C.12.c.

C.12.f. – Brisbane #24 – SKM

C.12.f.Manage PCB-containing Materials and Wastes during Building Demolition

Provision C.12.f requires development of a program to manage PCBs in building materials and wastes during demolition. Given the large standing stock of PCBs known to be present in certain buildings in the Bay Area, there could potentially be significant benefits to implementing the proposed control program. However, we are not aware that any data exist regarding the amount

of PCB-containing materials that are released to the ground during demolition and then mobilized into the MS4 by urban runoff, making it challenging to project with any certainty the actual water

quality benefit of the proposed control program. Cost-effectiveness relative to other PCB controls is also highly uncertain at this time.

- **Issue:** The various potential problems associated with PCBs in building materials (i.e., water quality, human exposure at the site, and disposal) should be addressed on a statewide or federal basis rather than focusing on water quality controls in the Bay Area only. Meeting the Tentative Order's three-year timeframe to develop a program to manage PCBs in building materials and wastes during demolition would likely require administration at the local level. This inappropriate and rushed approach would result in highly inefficient use of scarce public funds and likely be ineffective at comprehensively addressing the problems. It would also likely result in inconsistent programs across the Bay Area.

  Recommended Solution: Allow as a minimum the entire permit term for Permittees to work with the State, USEPA, the building industry, and other stakeholders to attempt to develop a comprehensive statewide or federal program analogous to current programs for asbestos and lead paint. Given the multiple environmental and public health issues in play, USEPA should play a large role in development of this program.

We look forward to continuing to work with you and your staff to resolve the issues described in this letter. Please contact me at 415.508.2131 if you have any questions or would like to discuss any of my comments.

Very truly yours,

RJ Breault

Randy L. Breault, P.E.
Director of Public Works/City Engineer

Cc: Matt Fabry, San Mateo Countywide Water Pollution Prevention Program

Mr. Dale Bowyer
c/o Regional Water Quality Control Board
1515 Clay St., Ste. 1400
Oakland, CA 94612

Re: Municipal Regional Stormwater Permit (MRP)

Dear Mr. Bowyer,

C.3. – General – BIA #1 - SKM
On behalf of BIA Bay Area we would like to express our support for the proposed Major Changes to Board Order No. R2-2009-0074, Municipal Regional Stormwater Permit Tentative Order as currently drafted, including the below revised regulations:

C.3.b.i. – BIA #2 – SKM
C.3.C.3 .b- Regulated Projects
• Remove grandfathering of pre-C. requirements for Regulated Projects. Regulated Projects that were approved with no C.3 . treatment requirements under a previous MS4 permit and that have not begun construction by the effective date ofthis permit shall be required to fully comply with Provision C.3.c and C.3.d (i.e., these projects must meet the hydraulic sizing criteria with LID treatment measures)

C.3.b.i. – BIA #3 – SKM
C.3 .c - Low Impact Development
• Remove the restriction to allow properly engineered and maintained biotreatment systems only after an infeasibility analysis of harvesting and use, infiltration, or evapotranspiration treatment measures.
BIA Bay Area appreciates staffs outreach for public comment on the proposed MRP regulations prior to adoption.
Respectfully submitted,
Patricia E. Sausedo
Government Affairs
BIA Bay Area
Attachments: (1)

Proposed Major Changes to Board Order No. Rl-2009-0074 Municipal Regional Stormwater Permit Tentative Order

C.2 - Municipal Operations

C.2.d - Pump Stations

• Deleted prescriptive requirements for pump station monitoring.
• Deleted all reporting requirements.

C.2.f - Corporation Yard

• Clarified the window for when annual corporation yard inspection needs to be done, between September 1st and September 30th. Based on a few corporation yard inspections performed during the permit term, we have found potential discharges and issues with the Storm Water Pollution Prevention Plans.

C.3 - New Development and Redevelopment

C.3.b - Regulated Projects

• Remove grandfathering ofpre-C.3 requirements for Regulated Projects. Regulated Projects that were approved with no C.3. treatment requirements under a previous MS4 permit and that have not begun construction by the effective date of this permit shall be required to fully comply with Provision C.3.c and C.3.d. (i.e., these projects must meet the hydraulic sizing criteria with LID treatment measures).

C.3.c - Low Impact Development

• Require Permittees to collectively develop and adopt design specification for pervious pavement systems, subject to Executive Officer Approval.
• Remove the restriction to allow properly engineered and maintained biotreatment systems only after an infeasibility analysis of harvesting and use, infiltration, or evapotranspiration treatment measures.
• Allow Permittees to collectively develop and adopt revisions to the soil media minimum specifications contained in the previous permit, subject to Executive Officer Approval.

C.3.e - Alternative or In-Lieu Compliance with Provision C.3.b

• Allow offsite alternative compliance projects to be completed within three years of the end of construction of the Regulated Project without penalty.
• Explicitly require that Permittees evaluate and report on the feasibility or infeasibility of all the following prior to invoking any Special Projects LID credits:
o 100% LID treatment onsite;
o 1 00% LID treatment offsite or at a regional project;
o Payment of in-lieu fees equivalent to 100% LID treatment; and
o A combination of LID treatment onsite, offsite, and at a regional project, and payment of in-lieu fees, the total of which is equivalent to 100% LID treatment.
• Change density criteria for LID treatment reduction credits to specify use of gross density in all cases.

Proposed Major Changes to Board Order No. R2-2009-0074 MRP Tentative Order

• Define floor area ratio (FAR) for purposes of determining the appropriate LID credits for density of commercial and mixed use projects.
• Allow mixed-use projects to use either the dwelling units/acre or FAR criteria to calculate LID treatment reduction credits based on density.
• Specify that all Special Projects LID treatment reduction credits will no longer be allowed after the permit term.
• Require reporting on Special Projects only once a year in Annual Report, but better define requirements for narrative discussion on feasibility or infeasibility of 100% LID (see Bullet #2 above).

C.3.g - Hydromodification Management

• Delete separate HM requirements for Contra Costa Permittees, requires submittal of updated HM information to comply with the standardized requirements, and sets a date by which projects receiving planning approvals must comply with the new requirements.
• Brings the HM requirements that were in attachments to the Previous Permit directly into the Provision and standardizes them.
• Allows the Permittees to develop and submit a new approach for meeting the Permit's hydromodification requirements, direct simulation of erosion potential, subject to the Executive Officer's approval.

C.3.h - Operation and Maintenance of Stormwater Treatment Systems

• Require inspections of pervious pavement systems of 3000 square feet or more, storm water treatment systems, and HM controls at time of installation instead of within 45 days of installation.
• Require regular inspections of pervious pavement systems of 3000 square feet or more at Regulated Projects and alternative compliance sites.
• Exclude private-use patios for single family homes, townhomes, or condominiums from the pervious pavement system inspection requirements above.
• For residential subdivisions with pervious pavement systems that include individual driveways, allow inspection of a representative number of driveways instead of all driveways.
• For vault-based storm water treatment systems, allow Permittees to accept 3rd party inspection reports in lieu of conducting Permittee O&M inspections, but only if the 3rd party inspections are conducted at least annually.
• Continue to require detailed database or tabular format on O&M inspections but remove requirement for annual reporting on individual inspections conducted during the reporting period. Add requirement that detailed information from the database must be submitted upon request by Executive Officer.
• Require Enforcement Response Plan for O&M inspections.

C.3.j - Green Infrastructure Planning and Implementation

• Require each Permittee to develop a Green Infrastructure Plan that meets the minimum requirements outlined in the MRP within the permit term.
• Permittees must submit documentation of early buy-in and commitment by governing body.
• Permittees must submit annual list of potential or planned green infrastructure projects.

C.4 - Industrial and Commercial Site Controls

Entire provision reformatted to flow and read better. This includes a brand new C.4.d. -Inspections, which essentially consolidates the inspection requirements in C.4.b. -Inspection Plan and C.4.c.Enforcement
Response Plan.

C.4.b - Inspection Plan

• Deleted requirement to submit list of facilities scheduled for inspection each year. Instead, each year's list is just added to the Inspection Plan.

C.4.c - Enforcement Response Plan

• Expanded to add examples and clarifications. ERP requirements are consistent in C.4, C.5, and C.6. We reviewed over 30 ERPs. Almost all ofthese ERPS are for all 3 provisions and nearly all of the ERPs reviewed already comply with the changes in the draft permit.

C.4.d - Inspections

• Consolidated the inspection requirements in C.4.b. -Inspection Plan (C.4.b.ii.(4)-(5)) and C.4.c.Enforcement
Response Plan (C.4.c.ii .(4) and C.4.c.iii.).
• Deleted use of"violation" as the driver for follow-up and reporting, but required adequate followup for potential and actual discharges to ensure implementation of corrective actions in a timely manner (1 0 business days after discovery of potential and/or actual discharges). Some Permittees

allow up to 30-days for businesses to implement corrective for potential discharges, which include housekeeping issues, evidence of actual discharges, lack ofBest Management Practices (BMPs), inadequate BMPs, and inappropriate BMPs. Some ofthese potential discharges can lead to an actual discharge, if not corrected before the next rain event.

C.5 - Illicit Discharge Detection and Elimination

C.S.b - Enforcement Response Plan

• Expanded to add examples and clarifications. ERP requirements are consistent in C.4, C.5, and C.6. We reviewed over 30 ERPs. Almost all ofthese ERPS are for all 3 provisions and nearly all of the ERPs reviewed already comply with the draft changes.

C.5.c - Spill and Dumping Complaint Response Program

• To reflect the changing landscape of web usage, added requirement to specifically publicize the central contact point for reporting spills and dumping on the Permittee's website by June 30, 2016.
• Added requirement to have a response flow chart or phone tree showing Permittee's staff responsible for the spill and dumping response program.
• The provision has been reformatted to read better.

C.S.d - Control of Mobile Sources

• Expanded reporting requirements to better understand what Permittees have done to comply with the Implementation Level requirements during this current permit term and what will be done to comply next permit term. There are no new Implementation Level requirements in the Draft Permit. The provision has been reformatted to read better.

C.S.e - Collection System Screening

• Deleted all requirements in the draft permit.

C.6 - Construction Site Control

C.6.b- Enforcement Response Plan

• Expanded to add examples and clarifications. ERP requirements are consistent in C.4, C.5, and C.6. We reviewed over 30 ERPs. Almost all of these ERPS are for all 3 provisions and nearly all of the ERPs reviewed already comply with the draft changes.

C.6.e - Inspections

• Added "hillside projects" disturbing greater than or equal to 5,000 square feet for monthly inspection and follow-up during the wet season. Permittees can use their existing map of hillside development areas or criteria, or hillside development can be defined as > 15% slope. They will need to certify their method of determining hillside development in the 2016 Annual Report.

C. 7- Public Information and Outreach

C.6.e- Public Outreach and Citizen Involvement Events

• Combined back together Public Outreach and Citizen Involvement Events

C.8 - Water Quality Monitoring

C.8.a - Compliance Options

• Encourages further regional collaboration, particularly in reporting.

C.8.d -Creek Status Monitoring

Management questions remain the same, but the provision is reformatted for clarity. The changes listed below reflect what we have learned in the previous permit term and/or new monitoring protocols:
• Level of effort at bioassessment sites is increased to reflect a change in the protocol. Analytic costs stay the same; time needed to conduct the assessment increases by about 20 minutes/site.
• Most sampling frequencies for Vallejo and Fairfield-Suisun Permittees are reduced to reflect the difference in population between them and other Permittees.
• Toxicity and sediment pollutant sampling are reduced by about half (in Creek Status and Pollutants of Concern Monitoring collectively). This represents a significant cost savings. New toxicity test procedures are required to reflect changes in the protocol and to test the most sensitive aquatic

species.
• The maximum number of follow up studies required is reduced from ten to eight (when done by all Permittees collaboratively), because lessoned learned through the studies are to be applied across the Permit area; thus, repetition is not always necessary. Old Appendix His eliminated; instead, the actions to take when monitoring results trigger follow up are included in the main body of Provision C.8.
• Stream Surveys are eliminated because similar information is collected through bioassessments. This represents a significant reduction in required effort.

C.8.e- Monitodng Projects

• BMP effectiveness investigations are eliminated because the requirement was redundant with Provision C.3.
• Geomorphic studies are eliminated because the information, while useful in stream restoration projects, is not directly used in managing urban runoff.

C.8.f- Pollutants of Concern (POC) Monitoring

The previous permit specified contaminants and frequencies and allowed an alternative monitoring approach if such an approach better addressed stated management questions. In this permit, C.8.f more explicitly addresses management information needs. The changes listed below reflect this approach:
• Requirements for specific monitoring locations, intensities and frequencies have been eliminated.
• Management information needs are stated in a way that is more focused on actions:
o Where are opportunities for load reductions?
o Which source areas contribute most to Bay impairment?
o Provide support for planning future management actions or evaluate existing actions.
o Assess POC loads, concentrations, or presence/absence.
o Evaluate trends in loads or concentrations ofPOCs.
• Monitoring actions that address the five management information needs are defined.
• The provisions identify specific pollutants of concern and state which management information needs apply to which pollutants.
• The overall level of effort for each management information need for each pollutant is specified.
• The Permittees have flexibility in allocating monitoring effort (provided that minimum levels of effort are satisfied) toward each of the pollutants and which type of monitoring activity can best address the management information need. A requirement for an annual Pollutants of Concern Report has been added (in new Provision C.8.g).

C.8.f- Citizen Monitol'ing and Participation

• Eliminated. Not necessary because Provision C.8.a. allows third-party monitoring.

C.9 - Pesticides Toxicity Control

This provision has relatively few changes, which include:
• The list of pesticides of concern to water quality is updated to reflect changes in pesticide usage and current monitoring data.
• References to EcoWise Certified IPM are minimized, because this program is not in full operation to the extent Permittees could readily access it.

C.lO - Trash Load Reduction

• Several benchmarks and compliance limits included:
o 60% trash reduction by benchmark July 1, 2016;

o 70% by July 1, 2017- this is a regulatory compliance limit;
o 80% benchmark by July 1, 20 19; and
o 100%, or no adverse impact to receiving waters from trash, by July 1, 2022.

• Accounting is map or TMA based, with trash generation areas weighted based on VH = 100 gal/acre/yr, H = 30 gal/acre/yr, M = 7.5 gal/acre/yr and L = 2.5 gal/acre/yr.
• Provision for compliance value for source control and additional creek and shoreline cleanup beyond Hot Spot cleanup requirements, with sufficient assessment and demonstration of sufficient outcome.
• Assessment is basis for all accounted credit toward trash reduction -visual assessment primary means
• Receiving water monitoring required

C.ll Mercury and C.12 PCBs

These two provisions remain similar to each other. The previous permit required pilot projects for a variety ofPCBs and mercury control measures. This Permit builds on what was learned in the pilot studies. The following requirements have been removed from C. I! and C.12:
• Collection and recycling mercury containing devices
• Monitor for methyl mercury
• Pilot projects to investigate and abate sources of mercury and PCBs in drainages and stormwater conveyances
• Pilot projects to evaluate and enhance sediment removal and management practices
• Pilot projects to evaluate on-site stormwater treatment via retrofit
• Diversion of dry weather and first flush flows to POTW s
• Developing an allocation-sharing scheme with Caltrans (for mercury)
C.ll and 12 now focus on achieving load reductions to make substantial progress toward achieving TMDL load allocations for urban runoff. These provisions require an assessment framework to document these load reductions. Some requirements relate to specific sources (e.g., PCBs in caulk), but, for the most part, Permittees must determine the most efficient and effective means of achieving the required load reductions. The major elements include:

C.11112.a Implement control measures to achieve PCBs and mercury load reductions

• Identify watersheds where controls implemented and control measures employed
• Implement sufficient PCBs controls by Year 3 to account for 0.5 kg/yr reduction
• Implement sufficient PCBs controls by end of permit to account 3 kg/yr over term ofMRP 2.0
• Implement sufficient mercury controls to account for substantial and measurable progress toward achieving TMDL allocations

C.ll/12.b Assess PCBs and mercury load reductions from stormwater

• Develop and implement an assessment methodology and data collection program to quantify PCBs and mercury loads reduced through implementation of all control measures.

C.ll/J2.c Plan and implement PCBs and mercury load reductions thmugh Green Infrastructure implementation

• Account for 120 grams/year PCBs load reductions through GI in years 3-5
• Account for 48 grams/year mercury load reductions through GI in years 3-5
• C.ll/12 contains expected performance outcomes
• Evaluate/Assess likely PCB and Hg -reduction benefits (and timing) through future GI implementation
• Provide reasonable assurance that GI infrastructure will yield load reductions

C.l1/12.d Plan for MRP 3.0 and beyond to reach allocation (applies to PCBs and Hg)

TMDL says: develop a plan to fully implement control measures that will result in attainment of allocations, including an analysis of costs, efficiency of control measures and an identification of any significant environmental impacts.
• Identifies specific load reduction commitments for the next five years (MRP 3.0) and details of how these will be accomplished (watersheds, control measures, schedule)
• Contains a plan and timeline designed to attain over the long-term the aggregate, region-wide,

urban runoff waste load load allocations.

Cl2.e Evaluate PCBs Presence in Storm Drain ot· Roadway Infrastructut·e in Public Rights-ofWay

• Take samples of caulk in roadway and storm drain infrastructure and analyze for PCBs.
• Submit sampling plan that focuses on sampling in areas where PCB caulk most likely used based on infrastructure age

C.12.f Manage PCB-Containing Materials and Wastes during Building Demolition

This is a new requirement which is expected to contribute significantly to the reduction in PCBs loads.
• In the first three years of the permit term, Permittees are required to develop a program for requiring applicants for demolition permits (for applicable structures) to control PCBs during the demolition process. Applicable structures are those built or remodeled between the years 1950 and 1980. Single-family residential and wood frame structures are excluded.
• In the final two years of the permit term, the Permittees are required to implement this program requiring the control ofPCBs during demolition.

C.12.g Fate and Transport Study of PCBs: Urban Runoff Impact on San F.-ancisco Bay Margins (may also apply to Hg, but likely also accomplished through RMP support)

This requires Permittees to collectively conduct or cause to be conducted studies aimed at better understanding the fate, transport, and biological uptake of PCBs discharged from urban runoff to San Francisco Bay margin areas.

C.11.e (C. 12.h) Implement a Risk Reduction Program (applies to PCBs and Hg)

This continues from the previous permit and encourages Permittees to (1) use the risk reduction framework developed during that time, and (2) collaborate with industrial and municipal wastewater discharger agencies.

C.l3- Copper Controls

C.l3 requirements are relatively unchanged. Some requirements have been scaled back or eliminated.

C.13.a - Manage Waste Generated from Cleaning and Treating of Coppet· Architectural Features, Including Copper Roofs, during Construction and Post-Construction

This continues essentially unchanged. Assuming the legal authority has now been established, Permittees shall continue to prohibit discharge from this activity.

C.l3.b - Manage Discharges from Pools, Spas, and Fountains that Contain Copper-Based Chemicals

• Retain similar provision element from MRP 1

C.l3.c - Vehicle Brake Pads

• This element has been eliminated

C.13.d - Industrial Sources

• This element has been retained essentially unchanged.

C.l3.e - Studies to Reduce Copper Pollutant Impact Uncertainties

• This element has been eliminated

C.14 - City of Pacifica and San Mateo County Fecal Indicator Bacteria Controls

This new provision implements the stormwater requirements of the San Pedro Creek (Creek) and Pacifica State Beach (Beach) Bacteria TMDL, which became effective October I, 2013. It affects two Permittees: the County of San Mateo and the City of Pacifica, to the extent they discharge to the Creek and Beach. This provision replaces the Previous Permit's Provision C.l4, which included monitoring requirements for contaminants of emerging concern, including polybrominated diphenyl ethers (PBDEs), legacy pestides, and selenium. Monitoring requirements for emerging contaminants have been incorporated into Provision C.8.

C.l -ta- Implement Control Measures to Achieve lndicator Bacteria Wastcload Allocations

• Requires the County of San Mateo and City of Pacifica to implement measures to address discharges to the storm drain, including: potential illicit discharges from the sanitary sewer system;

discharges from commercial horse and dog kennel facilities; and discharges of pet waste. Measures include public education, facility inspection, installation of dog waste stations, and appropriate refocusing of measures as additional information is collected.

C.14.h. - Conduct Water Quality Monitoring to Assess Attainment of Wasteload Allocations

• Requires monitoring of water quality at the Creek and Beach to determine whether they are meeting the TMDL's wasteload allocations. Additionally, requires an assessment, prior to the end

of the Permit term, of needed changes, such as additional control measures, to attain the wasteload allocations.

C.14.c.- Conduct Water Quality Monitoring to Characterize Sources of Bacteria in the Project Area and to Assess BMP Effectiveness

• Requires monitoring of subwatersheds to characterize bacterial water quality, identify particular areas and sources that may be resulting in exceedances of water quality objectives, and to evaluate the effectiveness of existing control measures and needed changes, if any.

C.15 - Exempted and Conditionally Exempted Discharges

C.15.a.- Exempted Non-Stormwater Discharge (Exempted Discharges)

• Clarified that well development water pumped groundwater from drinking water aquifers is not an exempted discharge.

C.15.b.i.(2) - Pumped Groundwater, Foundation Drains, and Water from Crawl Space Pumps and Footing Drains

• Defined process on how to determine conditional exemption eligibility (some Permittees selfdetermine, others defer to Water Board staff).

C.15.b.iii - Potable Water System Discharges

• Deleted.

C.15.b.vii- Additional Discharge Types

• Deleted but will consider specific types presented in ROWDs (applications).

C.15.b.viii.(3) - Permit Authorization for Exempted Non-Stormwater Discharges

• Deleted.

C.16 - Discharges to Areas of Special Biological Significance

This new provision implements amendments to the Ocean Plan regarding discharges to Areas of Special Biological Significance (ASBS). It affects discharges from San Mateo County into the James V. Fitzgerald Marine Reserve ASBS. Thus, it requires the County to complete an ASBS Compliance Plan and comply with other relevant requirements. The County is working with State Water Board staffto complete its draft plan.

The City of Burlingame

CITY HALL- 501 PRIMROSE ROAD
BURLINGAME, CALIFORNIA 94010-3997
www.burlingame.org

TEL: (650) 558-7200
FAX: (650) 556-9281

July 6, 2015

Mr. Bruce Wolfe
Executive Officer
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

Subject: Comments on the Tentative Order for the Reissued NPDES Stormwater Municipal Regional Permit

Dear Mr. Wolfe:

The City of Burlingame appreciates this opportunity to comment on the Tentative Order (TO) for the reissued NPDES stormwater municipal regional permit ("MRP 2.0") that was recently released by the San Francisco Bay Regional Water Quality Control Board (Regional Water Board) staff. Our comments reflect the importance of developing permit requirements that are flexible, practical, and cost-effective while meeting the challenges of continuing to protect water quality in our local creeks and San Francisco Bay. Our intent is for these comments to contribute to a constructive dialog that will result in additional permit revisions.

Please note that this letter focuses on our highest priority areas of concern, which are Provisions C.3 (New Development and Redevelopment, especially the Green Infrastructure provision), C.10 (Trash Load Reduction), and C.11/12 (Mercury and PCBs Controls).

C.12. – Burlingame #1 – SKM

Of particular concern is that Provision C.12 (PCBs Controls) continues to fall well short of providing Permittees with a clear and feasible pathway to attaining compliance. Please see the below sections for more details.

General – Concur/support and incorporate by reference SMCWPPP's comments – Burlingame #2 – SKM

For detailed comments on other sections of the permit, please refer to the comment letter submitted separately by the San Mateo Countywide Clean Water Program (SMCWPPP). We concur with and support all of SMCWPPP's comments and incorporate them here by reference. For each high priority issue that we have identified, a corresponding recommended revision to the Tentative Order is presented below, organized by each provision for which we are providing comments.

General – Concerns about timeline and funding – Burlingame #3 – SKM

The City of Burlingame fully supports the Regional Water Board's efforts to protect the San Francisco Bay, but is concerned about the burden on its staff and financial resources brought about by the compliance schedule and requirements outlined in this permit. While each permit provision outlines necessary work to improve our region's stormwater quality, the time necessary to meet the requirements of all provisions may affect a City's ability to carry out its goal of serving its residents and business owners. In addition, in order to carry out some provision requirements, additional funding will be required. This could involve requesting funds in following fiscal year budgets or obtaining funds through outside sources, which takes additional time (serveral months to years) that the City does not feel is considered within the various timelines presented in the Permit. The City respectfully asks that the Regional Water Board carefully consider the requests made in this letter as well as those of other Permittees.

C.3 - NEW DEVELOPMENT AND REDEVELOPMENT

C.3.b.i. - Burlingame #4 – SKM

C.3.b.i- Regulated Projects

Provision C.3.b requires that any Regulated Project that was approved before any C.3 requirements were in effect (i.e., does not have a stormwater control plan) and has not begun construction before MRP 2.0 takes effect must comply with provisions C.3.c and C.3.d (LID treatment and sizing requirements).

- Issue: Permittees do not have the legal authority to impose new requirements on projects with approved entitlements or development agreements, and therefore will face non-compliance with this requirement. Furthermore, it may be difficult for a project to change its site design and layout to accommodate LID treatment measures required by C.3.c and C.3.d.

  Requested Revision: Delete this requirement. It would have minimal water quality benefit and would likely lead to legal battles with developers. Only a small number of projects and a small percentage of impervious surface created/replaced in the region would be subject to this requirement. However, if the requirement remains, then at a minimum include language to allow flexibility in implementation (for example, "provide treatment to the extent feasible" and allow use of media filters) for projects that have prior tentative map approvals or development agreements.

C.3.c.i.(2)(b) – Burlinagme #5 – SKM

C.3.c.i.{2)- LID Site Design

Permittees are required to collectively develop and adopt design specifications for pervious pavement systems, subject to Executive Officer approval. Countywide program guidance manuals already include pervious pavement specifications.

- Issue: The process for compliance with this provision is unclear (i.e., whether and what type of submittal is required, and by when). In addition, the definition of pervious pavement systems does not include grid pavements (e.g., turf block or plastic grid systems).

  Requested Revision: Allow Permittees to reference a regional or countywide pervious paving specification in their annual reports (including a web link to the document) that meets the intent of this provision. Expand the definition of pervious pavement systems to include grid pavements.

C.3.e.ii.(4) - Burlinagme #6 – SKM

C.3.e.ii - Special Projects

The Special Projects criteria for LID treatment reduction credits include criteria for density expressed as Floor Area Ratio (FAR)[1] or Dwelling Units (DU) per acre. Both criteria are computed based on the size of the project site. The current permit allows jurisdictions to define FAR and calculate DU/acre consistent with their standard practices. MRP 2.0 prescribes specific definitions for each and requires that they be computed based on the total area of the site (e.g., DUlac based on gross densit/). The Permittees requested changes to the definitions as part of early input on the Administrative Draft and the changes were not incorporated.

- Issue: Permittees typically use a definition of gross density that excludes public rights-of-way. Using gross density as defined in the Tentative Order will result in a lower density value that may prevent some valuable high density projects from qualifying for LID treatment reduction credits. Similarly, Permittees would like to exclude public rights-of-way and public plaza areas from the computation of FAR.

  Requested Revision: Change the definitions of FAR and gross density to exclude public plazas, public rights-of-way, and civic areas.

[1] Floor area ratio is defined as the ratio of the total floor area on all floors of all buildings at a project site (except structures, floors, or floor areas dedicated to parking) to the total project area.

[2] Gross density is defined as the total number of residential units divided by the acreage of the entire site area, including land occupied by public rights-of-way, recreational, civic, commercial and other non-residential uses.

number of sites, so that they do not have to inspect them more frequently than

C.3.g.iv. – Burlingame #7 – SKM

Simulation of Erosion Potential

The Tentative Order contains similar HM standards and requirements for Permittees to those in the current permit. In addition, the Tentative Order allows the Permittees to collectively propose a method for sizing of HM facilities based on direct simulation of erosion potential, which may allow more efficient facility sizing.

- Issue: The method must be submitted to the Regional Water Board for review and adopted as a permit amendment before it can be applied. This administrative hurdle is unnecessary, as the method is consistent with the current HM standard (and it is the only requirement in the Tentative Order requiring an amendment), and will cause delay and uncertainty as to when the methodology can be used. Also, the provision contains several typos that make the requirements somewhat confusing.

  Requested Revision: Allow Executive Officer approval of the sizing methodology. Correct the following typos:
  - C.3.g.i- Move items (1) through (3) to after the first paragraph in which they are referenced.
  - C.3.g.ii.(3)- change "charges" to "charts" in the first sentence.
  - C.3.g.vii.(5)- delete the last bullet that refers to the Impracticability Provision, which is not included in the Tentative Order.

C.3.h.ii.(7) – Burlingame #8 – SKM

C.3.h - Operation and Maintenance of Stormwater Treatment Systems

- Issue: C.3.h.ii.(7) contains requirements for O&M Enforcement Response Plans. Section (c) requires that corrective actions for identified O&M problems with pervious pavement, treatment, and HM systems be implemented within 30 days of identification, and if more than 30 days are required, a rationale must be recorded in the Permittee's inspection tracking database. The process of contacting and educating the property owner, allowing the property owner to arrange for maintenance work to be completed, and following up with a re-inspection typically takes more than 30 days. In the Phase I Manager's early input on the Administrative Draft, a correction period of 90 days was requested, consistent with current practice by some Permittees and some existing maintenance agreements.

  Requested Revision: Allow 90 days for completion of permanent corrective actions.

C.3.h.ii.(6)(b) - Burlingame #9 – SKM

- Issue: Changes were made to allow Permittee to track inspections by the number of sites instead of numbers of treatment/HM facilities, which was an improvement, but inspection of at least 20% of the total number of Regulated Projects is required each year. Permittees have requested more flexibility around that number while still

number of sites, so that they do not have to inspect them more frequently than meeting the requirement of inspection of each site at least once every five years.

C.3.h.ii.(6)(b) – Burlingame #10 – SKM

In addition, more flexibility needs to be given to those Permittees that only have a small

number of sites, so that they do not have to inspect them more frequently than necessary.

Requested Revision: Change language to require inspection of "approximately 20%" of sites per year. Establish a minimum inspection frequency for each site of every two years.

C.3.h. – Burlingame #11 – SKM

Also, correct the following typos:

- C.3.h.ii.(7) – begin first sentence with "Permittees shall prepare and maintain..."
- C.3.h.v.(4)- Change "XX" Annual Report to "2017" Annual Report.

C.3.j. - Burlingame #12 – SKM

C.3.j -Green Infrastructure Planning and Implementation

This provision will be one of the most challenging portions of C.3 to implement and has a significant level of uncertainty in terms of what will constitute compliance. It also appears that the level of effort and resources required to implement Provision C.3 could be dramatically higher than implementing MRP 1.0 due to the new Green Infrastructure (GI) requirements.

C.3.j.i., C.11, C.12 - Burlingame #13 – SKM

Provision C.3.j.i requires each Permittee to develop a GI Plan. The GI Plan must include: mechanism to prioritize and map potential GI project areas; maps and lists generated by this mechanism, for implementation within 2, 7, and 12 years of the Permit effective date; targets for amounts of retrofitted impervious surface within 2, 7, 12, 27, and 52 years; tracking and mapping of installed GI systems; streetscape design and construction details and standards; a list of updates and modifications to existing related Permittee planning documents; and reporting on all of the above elements. Permittees must also prepare and submit annually a list of planned and potential GI projects, based on a review of capital improvement projects, and a summary of how each project will include GI to the Maximum Extent Practicable (MEP) or why it was impracticable to implement GI.

- Issue: The language in Provision C.3.j needs to be more consistent with the expectations in Provisions C.11 and C.12 for achieving PCB and mercury load reductions with GI. Discussions with Regional Water Board staff on C.11 and C.12 have suggested that load reductions required by GI over the MRP 2.0 permit term can be accomplished by private development and redevelopment, whereas C.3.j only refers to public retrofits.

  Requested Revision: Make more explicit in C.3.j (as well as in C.11/12) that private development and redevelopment as well as public projects will count toward meeting PCB and mercury load reductions, and that constructed public GI projects within the permit term are not required for compliance with GI pollutant load reductions.

number of sites, so that they do not have to inspect them more frequently than

C.3.j.i.(1) – Burlingame #14 – SKM

- Issue: Developing a comprehensive GI Plan will take time and significant resources, and the timeframes in the Tentative Order for completion of the Plan are unrealistic.

For example, the framework for the GI Plan has to be developed and approved by local governing bodies or city/county managers within one year of the Permit effective date. This is a very short timeframe given the effort required to coordinate and educate internal departments, educate upper level staff and elected officials, prepare the framework, conduct resource planning, and accommodate lead times for bringing the framework to governing bodies. Furthermore, our City's General Plan Update is underway and will be completed in the next 2-3 years. While it is an opportune time to integrate MRP Provision language in the General Plan where appropriate, City staff wants to ensure that work on the GI Plan conincides with that on the General Plan. Extending the timeline will allow the City to ensure both Plans are correctly integrated, well thought-out and fully vetted.

Additionally, the GI Plan must be completed and submitted with the 2019 Annual Report (three and one-half years from the expected Permit effective date). Completing a GI Plan will be a complex and time-intensive process that will require a great deal of municipal interdepartmental coordination and resources. Prioritization and mapping of potential and planned projects may not be able to be completed within two years of the Permit effective date.

Requested Revision: Provide additional time to complete and obtain governing body approval of the GI framework; e.g. extend the deadline to the required reporting date of September 15, 2017. Provide the entire permit term to complete the GI Plan. Eliminate the two-year deadline to complete prioritization, mapping, and begin implementation of planned/potential projects (before the GI Plan is completed), and include these efforts in the GI Plan development period.

C.3.j.i.(1)(a) – Burlingame #15 – SKM

- Issue: Prioritization and mapping of potential and planned projects will be a major, resource-intensive effort, especially for those smaller jurisdictions that do not have GIS data layers already available. Additional flexibility in approaches to mapping and prioritization is needed. In addition, the time intervals for planning should be aligned with fiscal years, and made consistent with the time intervals for load reductions in C.11/12.

  Requested Revision: The mechanisms used to develop the GI Plan and priorities should include other less complex tools in addition to the GreenPlan-IT tool. The time intervals should be changed to FY 19-20, FY 24-25, and FY 29-30 (to align with C.11/12 load reduction reporting intervals of 2020 and 2030).

C.3.j.i.(1)(c) – Burlingame #16 – SKM

- Issue: Provision C.3.j.i(1)(c) requires Green Infrastructure Plans to include "targets for the amount of impervious surface within the Permittee's jurisdiction to be retrofitted" within 2, 7, 12, 27, and 52 years of the Permit effective date. It is unclear how these "targets" are to be established by each Permittee. In addition, the timeframes for establishing "targets" (we would prefer the term "projections") for the

amount of impervious surface retrofitted do not line up with the C.11/12 load reduction timeframes, making it difficult to calculate projected load reductions.

Requested Revision: Allow the development of "projections" instead of "targets", and allow Permittees to include projected private development as well as public projects. Allow projections to be developed for the years 2020, 2030, 2040, and 2065, consistent with C.11/12 and with other municipal planning documents.

C.3.j.ii. – Burlingame #17 – SKM

- Issue: Provision C.3.j.ii requires early implementation of GI, focused on identifying and implementing public projects that have potential for GI measures (including LID treatment) within the permit term. It is unclear how compliance with this section will be determined. The process for review of planned capital projects needs to be more defined and objective, in order to avoid disagreements with Regional Water Board staff as to what are "missed opportunities". There also needs to be the recognition that while it may be technically feasible to add LID features to a capital project, the funding for the additional features and the ongoing maintenance of the LID features may not be available. Implementation (i.e.. design and construction) during the Permit term of GI projects that are not already planned and funded will be very challenging for most Permittees.

  Requested Revision: Efforts during the MRP 2.0 term should focus on development of long-term GI Plans and opportunistic implementation of GI projects where feasible and where funding is available. Add language proposed by the Permittees as early input to the Administrative Draft Permit (as shown in the footnote below[3]) that would allow for consistent review of capital projects for GI opportunities, based on specified criteria.

C.10 -TRASH LOAD REDUCTION

C.10.a.i. – Burlingame #18 – SKM

C.1O.a.i – Trash Reduction Requirement Schedule

- Issue: Reductions become increasingly more challenging the closer Permittees move towards the trash reduction goal of "no adverse impacts". Provision C.10.a.i (Schedule) requires a 70% load reduction by 2017. This schedule is too rigorous and should be extended to allow for more time to develop/implement sustainable control measures. Most of the areas remaining to address are moderate trash generating areas and willing likely require more innovative controls that will have to be piloted.

[3] Proposed language: "Permittees shall review and analyze appropriate projects within the Permittee's capital improvement program, and for each project, assess the opportunities and associated costs of incorporating LID into the project. The analysis shall consider factors such as grading and drainage, pollutant loading associated with adjacent land uses, uses of available space with the project area, condition of existing infrastructure, opportunities to achieve multiple benefits such as providing aesthetic and recreational resources, and potential availability of incremental funding to support LID elements along with other relevant factors... Permittees will collectively evaluate and develop guidance on the criteria for determining practicability of incorporating green infrastructure measures into planned projects."

Requested Revision: We request that the 70% load reduction time schedule, set for 2017 in the Tentative Order, be extended at least to 2018.

C.10.a.ii. – Burlingame #19 – SKM

C.10.a.ii.b- Trash Generation Area Management (Private Drainage Areas)

- Issue: Provision C.1O.a.ii.b (Trash Generation Area Management) requires Permittees to map and assess ALL private drainages 5,000 fe and greater, determine the level of trash present in these areas, and ensure that no further actions are needed. The intent of mapping these drainages is unclear. Mapping would require a significant undertaking that would result in minimal water quality benefit. Ensuring that private drainages are at a "low" trash generation level does not require mapping. Areas can be identified by modifying existing municipal inspection programs already in place.

  Requested Revision: We request that the mapping requirement be removed from this provision. As an alternative, Permittees should be required to: 1) identify high priority areas that generate moderate, high or very high levels of trash and are plumbed directly to their strom drain systems, and 2) cause these areas to be managed to a level equivalent to the performance of a full capture system or to a low trash generation level.

C.10.a.iii. – Burlingame #20 – SKM

- Issue: Throughout the Bay Area thousands of Green Infrastructure (C.3 compliant) facilities have been constructed on properties over the last 10+ years. These facilities were designed consistent with the new and redevelopment requirements and perform at a level similar to typical trash full capture systems. These systems have been designed to prevent flooding and effectively remove pollutants from stormwater. Provision C.1O.a.iii (Mandatory Minimum Full Trash Capture Systems) currently requires Permittees to install a screen (5mm) to the overflow pipes of all Green Infrastructure facilities before these devices can be considered full capture systems. Screening the overflow pipes would be out of the scope of the municipality's authority, as nearly all treatment facilities are privately owned and maintained. Additionally, adding screens to existing facilities would have unknown effects to the performance of these systems and would likely increase the maintenance and flooding if retrofitted with screens. The requirements for the sizing and design of green infrastructure facilities are now well established. The City asks the Water Board to reconcile this issue.

  Requested Revision: We request that the Water Board remove the requirement for "screening" all Green Infrastructure treatment facilities installed and maintained consistent with provision C.3, and in the Permit deem that these facilities are equivalent to full capture systems.

C.10.b.i.a. – Burlingame #21 – SKM

C.10.b.i.a- Maintenance (of Full Trash Capture Systems)

- Issue: Provision C.1O.b.i.a (Maintenance of Full Capture Systems) currently requires maintenance of small capture devices based on the level of trash generated in the surrounding area. Maintenance frequencies based on trash generation is inconsistent with existing operations and maintenance programs, and the experience and knowledge of Permittees. Maintenance frequencies are site specific and are mostly affected by the amount of vegetative material (typically comprising over 85% of the debris captured by a device) that reaches the device and the size of the inlet vault, not the amount of trash generated in the surrounding area.

  Requested Revision: As an alternative to arbitrary maintenance frequencies, we request that the TO be revised to require Permittees to develop and implement Permittee-specific maintenance programs to achieve/maintain full capture criteria. Permittees would then report on the implementation of their maintenance programs, adaptation of these programs and any issues that need to be addressed. Tailoring maintenance programs to maintenance needs of specific devices is the only way to ensure adequate maintenance of these devices into the future.

C.10.b.iv. – Burlingame #22 – SKM

C.10.b.iv- Source Controls

The most important actions that can be taken by Permittees are those that eliminate the generation of litter prone items in perpetuity. Bay Area Permittees have been national leaders on taking actions to eliminate the sale or distribution of liter prone items. Nearly every Permittee in the Bay Area has adopted an ordinance focused at eliminating certain types of trash in our creeks and the Bay. These actions took significant political support and public resources, and were done in partnership with environmental non-governmental organizations (NGOs).

- Issue: Permittees to-date have focused on instituting a number of different types of source control actions. Data collected by Permittees indicated that each individual action reduces, on average, between 5 and 10% of the trash found in stormwater. These reductions are likely not observed by visual assessment protocols, because they are only precise enough to detect reductions greater than 25%. Therefore, without a specific reduction value for source controls, reductions associated with these actions may never be valued.

  The maximum of 5% reduction for all source control actions is arbitrary and inconsistent with our currently knowledge of the percentage of trash in stormwater associated with specific litter-prone items reduced bysource control actions. The programs put into place to address these litter prone items are effective and directly impact stormwater quality.

Requested Revision: We request that the TO be revised to increase the maximum reduction value for all source control actions combined to 25%. Supporting evidence would be required to claim reductions associated with source controls.

C.10.b.v. – Burlingame #23 – SKM

C.10.b.iv- Receiving Water Observations

- Issue: The TO requires that the Permittees conduct receiving water observations downstream from trash generation areas converted to "low" trash generation. By requiring Permittees to focus on areas downstream of control actions, it appears that receiving water observations could be used to judge compliance with reductions associated with municipal stormwater. This is confusing, because the process to judge compliance with stormwater reductions is outlined in the TO – full capture, visual assessments, source control values, and offsets associated with cleanups.
  We are supportive of an ambient monitoring program that would continue to evaluate trash conditions or levels in local creeks and rivers using a cost-effective and practical protocol. This protocol, however, has not yet been developed.

  Requested Revision: We request that the TO language be revised to state that purpose of receiving water observations is "...to evaluate the level of trash present in receiving waters over time, and to the extent possible determine 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)." Additionally, we are willing to be a partner with the Water Board and NGOs in developing and pilot-testing a protocol during the permit term to achieve this purpose.

C.10.e.i. – Burlingame #24 – SKM

C.1O.e.i – Optional Trash Load Reduction Offset Opportunities - Creek and Shoreline Cleanups

Creek and shoreline cleanups are important actions that promote community involvement, create awareness of trash issues, and improve water quality. These actions have water quality value, are supported by the community and environmental NGOs, and should be accounted for accordingly in the load reduction accounting method.

- Issue: While we appreciate the inclusion of load reduction benefits associated with creek and shoreline cleanups, the 5% maximum offset for these important actions is too small and inconsistent with the environmental benefit. Additionally, the arbitrary 10:1 ratio of trash removed to offset value is too large and undervalues the benefits of these actions.

  The requirement for a m1mmum cleanup frequency of two times a year at each specific site creates inflexibility and is too constraining. Permittees may choose to clean up sites at different frequencies based on different pollutant sources, neighboring land uses or available volunteer assistance. The City asks for more flexibility and for the focus to be on the amount of trash/litter removed from the site.

Requested Revision: We request that the TO be revised to:

.. Increase the maximum offset for creek and shoreline cleanups to 10%;
.. Reduce the ratio of trash removed to reduction value to 3:1, similar to other types of mitigation programs; and,
"" Remove the requirement that a site cleanup occur at least two times a year before claiming an offset.

C.10.e.ii. – Burlingame #25 – SKM

C.10.e.i – Optional Trash load Reduction Offset Opportunities – Direct Discharge Trash Controls

This offset is intended to address trash impacts associated with non-stormwater pathways to creeks and rivers such as illegal dumping directly into water bodies. These pathways directly impact water bodies and at some sites serve as the dominant source of trash. Programs that address trash from direct discharges should be accounted for accordingly in the load reduction accounting method.

- Issue: While we appreciate the inclusion of load reduction benefits associated with direct dumping, the 10% maximum offset for these important programs is too low and inconsistent with the environmental benefit of these programs. Additionally, the arbitrary 10:1 ratio of trash removed to offset value is too large and undervalues the benefits of these actions. Lastly, Permittees post-2016 may identify direct discharges as an important source of trash to receiving waters, and therefore, the 2016 Annual Report should not be the only timeframe when Permittees can submit a plan to address these sources.

  Requested Revision: We request that the TO be revised to:

  - Increase the maximum offset for programs addressing direct discharges to 25%; and,
  - Reduce the ratio of trash removed to reduction value to 3:1, similar to other types of mitigation programs.
  - Allow for submittals of plans to control direct discharges post-2016.

C.10.f. – Burlingame #26 – SKM

C.10.f- Reporting

- Issue: Compliance with NPDES permits is determined by the Water Board. Provision C10.f.v.b requires the Permittees to "submit a report of non-compliance" if it cannot demonstrate the attainment of 70% reduction, which therefore assumes that compliance determinations are made by the Permittee.

  Requested Revision: We request that the Water Board revise this provision to require that a Permittee that cannot demonstrate a 70% reduction, "submit a report

and updated Long-term Trash Load Reduction Plan that describes actions to comply with the mandatory deadlines in a timely manner…"

C.11. – Burlingame #27 – SKM

C.11 - MERCURY CONTROLS
Provisions C.11.a- c in the Tentative Order generally parallel C.12.a- c. Therefore, the below comments on those provisions for C.12 (Polychlorinated biphenyls Controls) also generally apply to C.11 (Mercury Controls).

C.12. – General – Burlingame #28 – SKM

C.12- POLYCHLORINATED BIPHENYLS (PCBs) CONTROLS

PCBs are a highly persistent (i.e., slow to degrade) legacy pollutant that have been in San Francisco Bay for decades and likely will remain in the Bay for decades to come. Over the past 15 years, Bay Area municipalities, in collaboration with the Regional Monitoring Program (RMP), have conducted extensive field studies and gained considerable knowledge about the distribution of PCBs in the Bay Area environment. Due to widespread uses and lack of regulation over many decades (i.e., 1930s- 1970s), this pollutant was widely dispersed in soils and sediments throughout the urban landscape draining to the Bay. Similarly, PCBs are widely dispersed within the Bay's sediments.

Bay Area municipalities have also made a great deal of progress over the past 15 years towards understanding the types of control measures that are most cost-effective in reducing PCBs discharges in stormwater. Although this evaluation of controls is ongoing, no controls identified to-date are particularly cost-effective, apart from the 1979 ban by USEPA on PCBs manufacture, import, export, and distribution in commerce in the United States. The ban represented effective "true source control" but came much too late to have prevented the widespread distribution of PCBs into the urban landscape and the Bay. With further true source control generally not an option, the current challenges in addressing PCBs are not surprising.

Extensive source property identification programs led by Bay Area municipalities have identified a small number of PCBs "hot spots" in watersheds across the Bay Area. These hot spots are mostly associated with properties that are currently under cleanup orders from the Regional Water Board, EPA, or DTSC, or are currently permitted by these agencies or could be in the future. These sites are generally outside of the control of local agencies.

It may also be possible to reduce PCBs discharges in stormwater over the next few decades by requiring (as the permit does now through provision C.3) stormwater treatment on private properties as they are redeveloped. Retrofitting of landscape-based treatment structures (e.g., "Green Streets") into the public right-of-way is another approach that provides multiple benefits, but is highly resource and time intensive. Planning for a long-term (i.e., decadal) program to retrofit such Green Infrastructure into the urban landscape has been incorporated into the Tentative Order, but implementation will mostly occur during future permit terms and require several decades.

Additionally, although highly uncertain, there may be opportunities to prevent future contamination as buildings containing PCBs that were constructed during the 1950s - 1970s are demolished. However, the rate at which buildings are demolished and redevelopment occurs, and therefore the timeframe for reduction of PCBs associated with these sources and areas, is generally out of the control of local agencies.

This lack of control over redevelopment and demolition, and the unknowns about the extent and magnitude of additional "hot spots," creates a high level of uncertainty in the level of implementation that cities and counties can commit to during the next five year permit term. In turn, the uncertainty in implementation creates compliance uncertainty when compliance targets in the permit include assumptions regarding the rate of redevelopment and demolition.

Provision C.12 of the Tentative Order uses a framework that is a hybrid of two approaches, requiring: 1) BMP implementation and 2) pollutant load reduction. The required BMPs are Green Infrastructure and managing PCBs-containing materials and wastes during building demolition activities. However, it appears that the primary intent is to require Permittees to demonstrate a total cumulative Bay Area-wide PCBs load reduction of 3 kg/year over the permit term. Our overarching concern is that Provision C.12 continues to fall well short of providing Permittees with a clear and feasible pathway to attaining compliance with this load reduction requirement.

It is also important to note that the level of effort and associated resources required to implement Provision C.12 as set forth in the Tentative Order is highly uncertain. Much of the cost of implementing PCBs control programs during the current permit term was offset by a grant from USEPA that will end in 2016. The availability of grant or other funding for implementing Provision C.12 of the reissued permit is unknown. As a starting point, making all of the below recommended revisions would result in much greater certainty regarding the level of effort and associated resources that would be required to comply with Provisions C.12, and create a much clearer pathway towards complying with the MRP.

C.12.a. – Burlingame #29 – SKM

C.12.a – Implement Control Measures to Achieve Load Reductions

The Tentative Order appears to require Permittees to reduce PCBs loads to the Bay by 3 kg/year by the end of the permit term. The approach includes developing an accounting system for Executive Officer approval early in the permit term that would form the basis for the load reductions credited to the various PCBs controls.

- Issue: There is a lack of a clear and feasible pathway for Permittees to attain compliance with the load reduction requirements. Most factors that would be key to meeting the criteria are uncertain and many are not within Permittee control (e.g., extent of source properties that will be found, building demolition rates, and redevelopment rates), making achievement of compliance uncertain.

  Requested Revision: Load reduction performance criteria should not be the point of compliance. Compliance should be based upon implementing PCBs control

programs designed to achieve a load reduction target (such as a Numeric Action Level or similar mechanism for triggering requirements for additional action and reporting), based on an interim accounting method (see next section). The target would be informed by what the BMP programs could achieve, based on the accounting system, which would agreed upon upfront and incorporated into the permit.

C.12.a. – Burlingame #30 – SKM

- Issue: The schedule for the following reporting requirements in Provision C.12.a. is unrealistic.
    - Provision C.12.a.iii.(1) - February 1, 2016 report providing "a list of watersheds (or portions therein) where PCBs control measures are currently being implemented and those in which control measures will be implemented (C.12.a.ii.(1)) during the term of this permit as well as the monitoring data and other information used to select the watersheds."
    - Provision C.12.a.iii.(2) - 2016 Annual Report providing "the specific control measures (C.12.a.ii.(2)) that are currently being implemented and those that will be implemented in watersheds identified under C.12.a.iii.(1) and an implementation schedule (C.12.a.ii.(3)) for these control measures. This report shall include: .... [scope, start dates, progress milestones, schedules, roles and responsibilities of Permittees, etc...]....".

Requested Revision: Extend the deadlines for the above reports to the 2017 Annual Report.

C.12.b. – Burlingame #31 – SKM

C.12.b. Assess Load Reductions from Stormwater

SMCWPPP, other countywide stormwater programs, and Regional Water Board staff recently worked together to develop an interim accounting method. It was intended to provide a basis for stipulated load reduction benefits for implementation of the primary PCBs control programs that Permittees anticipate implementing during the MRP 2.0 permit term (this interim accounting method would be revised before the next permit term). We appreciate that Regional Water Board staff included much of the information developed for the interim accounting method in the fact sheet.

- Issue: Values for certain key accounting parameters for managing PCBs-containing materials and wastes during building demolition activities were left out.

Requested Revision: Include in the interim accounting method values for all parameters to allow for scrutiny during the public permit review process, given the uncertainty in these values. It is especially important to include values for all parameters associated with managing PCBs-containing materials and wastes during building demolition activities, including the fraction of PCBs mass in a building that enters the MS4 during demolition in the absence of enhanced controls, which is

particularly uncertain. Stormwater programs can also provide similar values for mercury to include in the fact sheet as well.

C.12.b.iii. – Burlingame #32 – SKM

- Issue: Requirement to formally submit load reduction assessment methodology early in the permit term for Executive Officer approval creates uncertainty in the load reduction benefit for each PCBs control program.

  Requested Revision: Omit the requirement to submit load reduction accounting method early in the permit term. Instead, the interim accounting method should be finalized, incorporated into the permit, and then used to calculate PCBs load reductions during Permittee annual reporting. As the various provisions cause the City to use a significant amount of resources, we think it is beneficial to not 'recreate the wheel' when possible. It makes sense to finalize the methodology already collaborated upon by various stakeholders.

C.12.a. & c. – Burlingame #33 – SKM

- Issue: Water Board staff has acknowledged that load reduction performance criteria are not numeric effluent limits. This should be made clear in the permit. In addition, further clarity is needed regarding the legal definition of the performance criteria and implications with regard to enforcement and potential third party lawsuits.

  Requested Revision: PCBs load reduction performance criteria should be in the form of Numeric Action Levels or a similar mechanism for triggering requirements for additional action and reporting. In addition, the permit should include contingency language that would allow for achieving compliance if a good-faith demonstration of efforts and actions by Permittees consistent with permit requirements falls short of achieving the load reduction performance criteria.

C.12.b.iii. – Burlingame #34 – SKM

- Issue: Provision C.12.b.iii requires that Permittees submit Permittee-specific proportions of load reduction responsibilities and supporting data to the Water Board by April 1, 2016 – four months after the effective date of the permit. Although Permittees and the RMP have spent considerable time and resources towards identifying PCB hot spots and watersheds producing greater levels of PCBs to the Bay, data have not been collected at a level to which proportions of load reduction responsibilities could confidently be assigned to Permittees. Furthermore, assigning Permittee-specific responsibilities with high levels of uncertainty upon which compliance could be based is not good public policy and could inadvertently unduly place responsibilities upon certain Permittees requiring the spending of public resources towards fictitious goals not based in reality.

  Requested Revision: Delete requirement to develop and submit Permittee-specific proportions of load reduction responsibilities.

C.12.c. – Burlingame #35 – SKM

C.12.c. Plan and Implement Green Infrastructure to Reduce PCBs Loads

Provision C.12.c of the Tentative Order requires Permittees to implement Green Infrastructure projects during the term of the permit to achieve PCBs load reductions of 120 g/year over the final three years of the permit term. Additionally, Permittees are required to prepare a reasonable assurance analysis to demonstrate quantitatively that PCB load reductions of at least 3 kg/yr throughout the Permit area will be achieved by 2040 through implementation of Green Infrastructure plans required by Provision C.3.j.

- Issue: It is unnecessary to include performance criteria for PCBs load reductions through implementation of GI over the reissued permit term. PCBs load reductions will not be the driver for GI implementation during the reissued permit term. Regional Water Board staff has noted that based on extrapolation of data from the current permit term, the proposed metrics should be met via redevelopment in old industrial areas. Thus, the proposed criteria would not influence GI implementation during the reissued permit term, and meeting them would instead be dependent upon an activity that is not under Permittee's control. While we expect to learn valuable lessons via opportunistic early implementation of GI retrofit projects through Provision C.3.j.ii, the pollutant load reductions associated with these retrofits implemented over MRP 2.0 is anticipated to be relatively small.

  Requested Revision: Provision C.12.c should be deleted.

C.12.c. – Burlingame #36 – SKM

- Issue: It does not make sense to prejudge that PCBs load reductions of at least 3 kg/yr throughout the Permit area should be achieved by 2040 through implementation of Green Infrastructure plans. The actual load reductions that Permittees expect to achieve via Green Infrastructure will be determined during the planning and reasonable assurance analysis required by Provision C.12.d., as part of planning for achieving the overall PCBs TMDL allocations.

  Requested Revision: Provision C.12.c should be deleted.

C.12.f. – Burlingame #37 – SKM

C.12.f. Manage PCB-containing Materials and Wastes during Building Demolition

Provision C.12.f requires development of a program to manage PCBs in building materials and wastes during demolition. Given the large standing stock of PCBs known to be present in certain buildings in the Bay Area, there could potentially be significant benefits to implementing the proposed control program. However, we are not aware that any data exist regarding the amount of PCBs-containing materials that are released to the ground during demolition and then mobilized into the MS4 by urban runoff, making it challenging to project with any certainty the actual water quality benefit of the proposed control program. Cost-effectiveness relative to other PCBs controls is also highly uncertain at this time.

- Issue: The various potential problems associated with PCBs in building materials (i.e., water quality, human exposure at the site, and disposal) should be addressed holistically on a statewide or federal basis rather than focusing on water quality

controls in the Bay Area only. Meeting the Tentative Order's three year timeframe to develop a program to manage PCBs in building materials and wastes during demolition would likely require administration at the local level. This inappropriate and rushed approach would result in highly inefficient use of scarce public funds and likely be ineffective at comprehensively addressing the problems. It would also likely result in inconsistent programs across the Bay Area.

Recommended Solution: Allow at a minimum the entire permit term for Permittees to work with the State, USEPA, the building industry, and other stakeholders to attempt to develop a comprehensive statewide or federal program analogous to current programs for asbestos and lead paint. Given the multiple environmental and public health issues in play, USEPA should play a large role in development of this program.

We look forward to continuing to work with you and your staff to resolve the issues described in this letter. Please contact Syed Murtuza, Public Works Director at (650) 558-7230 if you have any questions or would like to further discuss any of our comments.

Sincerely,

Mayor, City of Burlingame

C: City Council
Lisa Goldman, City Manager
Syed Murtuza, Public Works Director

Contra Costa County
Public Works Department

Julia R. Bueren, Director
Deputy Directors
Brian M. Balbas
Stephen Kowalewski
Stephen Silveira
Joe Yee

July 10, 2015

Bruce Wolfe, Executive Officer
California Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay Street
Oakland, CA 94612
Via email to: mrp.reissuance@waterboards.ca.gov

Subject: Comments on the Tentative Order Reissuing the Municipal Regional NPDES Permit {MRP 2.0)

Dear Mr. Wolfe and Members of the Board:

Thank you for the opportunity to comment on the Tentative Order reissuing the Municipal Regional Stormwater Permit (MRP 2.0). Contra Costa County (County) continues to support the Water Board's objectives of reducing stormwater pollution and protecting our local creeks, the Delta and San Francisco Bay.

In the spirit of collaboration, Contra Costa County asks the Water Board members to consider the following issues and comments, and direct Water Board staff to continue to work with permittees to revise the Tentative Order into a permit that will create a foundation where the Permitees can succeed.

General – CC County #1 – STL

Issue 1: Major new and expanded mandates should be offset by eliminating less beneficial tasks

The draft Tentative Order includes a new mandate to develop Green Infrastructure Plans. This coordinated, multi-year effort represents a significant paradigm shift toward developing comprehensive long-range plans that will significantly reduce the amounts of urban runoff pollutants, including the pollutants of concern, flowing into receiving waters. It will also require significant investment on the part of all permittees. At the same time, the County will need to dramatically reduce the amount of litter and trash that enters into our stormdrain network. These substantial efforts should be balanced with reductions in permit requirements that provide less benefits.

C.3. – CC County #2 – STL

Issue 2: Require projects with approved vested tentative maps issued prior to 2005 to implement new conditions of approval (to comply with Provision C.3)

The County has no legal authority or mechanism to impose additional requirements on projects with approved vested tentative maps. It will take State legislation to create this authority. It is seriously doubtful that such legislation would be approved by the California Legislature and signed by the Governor. The few developments which remain unbuilt will have a minimal impact upon water quality and stream channel stability.

C.3. – CC County #3 – STL

Issue 3: The Cost to develop a "Green Infrastructure Plan" (GI Plan) to treat stormwater runoff from many impervious surfaces needs to be offset by reduction in other stormwater pollution efforts

The County will be required to assess the unincorporated urban areas built between 1945 and 1980 for a watershed/drainage area focused GI Plan. The Transportation Division of the Public Works Department will need to rewrite the Capital Road Improvement Plan for these areas to include the LID to treat POCs. This will be a massive undertaking, involving the majority of the County's 17 unincorporated communities. The County Watershed Program is fully supportive of developing this plan. The County is planning to budget $1,000,000 over five years to develop the GIPlan. The County will not only assess County roads, but also, County buildings and properties as part of the GIPlan. The estimated cost to develop the plan is $200,000 per year the County can't spend on other stormwater pollution reduction activities. Contra Costa County needs commensurate reductions in other NPDES requirements to allow it to meet its budget limitations.

C.3. – CC County #4 – STL

Issue 4: Impact of implementing the GI Plan on Road Funds

Implementation of the GIPlan in public road rights of way will be funded through funds used to build and maintain road infrastructure. Integration of GIfeatures will not only radically increase the cost of capital road, sidewalk, and trail improvements; it will compete with road funds used to maintain the existing County roads. With more Road Funds being spent on GIfeatures, less money will be available for road maintenance. The quality of the pavement will worsen, the risk of pavement failure will increase, which will require more money to repair. This will impact the safety and driving experience of the traveling public. Revenue for roads has been decreasing for some time, and are expected to decrease even more in the future.

C.5. – CC County #5 – STL

Issue 5: Ability to monitor mobile cleaner businesses

There is no doubt mobile cleaners is one of the most difficult industries to regulate. They are often single-truck operations, which are owned and operated by a single individual. They often work within several municipalities, even different counties. Contra Costa County, like most cities, issues business licenses to small business like this. Very few people apply for a permit to operate mobile cleaning devices. Implementation of the proposed program would drive these businesses further underground. An initial outreach campaign implemented through BASMAA to Bay Area business listed in phone books and internet directories would be a more effective approach.

C.7. – CC County #6 – STL

Issue 6: Requirements for multiple advertising campaigns split stormwater dollars and dilute effectiveness of message effort

Requiring multiple outreach and education campaigns in a five-year permit term splits tax payer dollars leading to short campaigns with limited funding to reach the desired audience. A single, united campaign, chosen by BASMAA Board of Directors that is implemented over the entire permit term, would be more effective. Ideally, the campaign would focus on stormwater awareness, something akin to "Spare the Air" or Keep Tahoe Blue," and would run for several permit terms.

C.10. – CC County #7 – STL

Issue 7: Diversity and geographic distribution of unincorporated Contra Costa County communities requires individualized trash reduction strategies and longer implementation time frames.

Unincorporated Contra Costa communities are distinct and require individualized approaches for implementation of NPDES issues. County Watershed Program staff prepared 19 community-based trash reduction plans, which are treated as primary Trash Management Areas. Each of the community trash plans are tailored to the unique capabilities and challenges the community faces. What may work in one community, may not work in another. Thirteen of these communities have Municipal Advisory Councils (MACs), whose members are critical resources of knowledge, enthusiasm and leadership in their communities. The MACs must be consulted when proposing activities that will affect the community. This slows down the planning and implementation process. The County requests Regional Board staff take these challenges into consideration when evaluating compliance of the trash provisions of the MRP 2.0.

C.10. – CC County #8 – STL

Issue 8: Infeasibility to map private storm drain system and requirement to install trash capture devices for private storm drains

This is a hugely expensive proposed condition, especially in older communities. The cost for the County to map or a private property owner to prove that a storm drain inlet on their property does not discharge to the MS4, would be prohibitive and seen as over regulation by most people. It appears that the intent is to focus on stormdrain inlets in commercial parking lots. These facilities are already inspected as part of the commercial and industrial inspection program (C.4). This program is already used to addressing trash in unincorporated Contra Costa County. Litter in a parking lot is a "potential discharge"; litter in the storm drain inlet in the parking lot is a "violation," as is business related litter in the gutter or storm drains adjacent to the business. Contra Costa County already works with businesses with chronic trash problems to either, conduct regular on-land clean-ups, sweep on a regular basis, and/or install trash capture devices in parking lots. The County encourages the Water Board to allow municipalities to use their existing authority to address trash on private properties.

C.10. – CC County #9 – STL

Issue 9: Specifying maintenance frequencies for trash capture devices

Maintenance intervals for trash capture devices are best set through a monitoring program. The County recommends that the Permit require a minimum schedule of *monitoring.* Based on the results of the monitoring, maintenance of in-line and drainage inlets trash capture devices should be scheduled accordingly. The schedule proposed in C.10.b.i.a is appropriate for the monitoring frequency. The County supports maintaining inspection and maintenance records for Water Board use, as needed.

C.10. – CC County #10 – STL

Issue 10: Diluted offset ratio for instream clean-ups removes incentive to remove trash within-stream channels

The County supports giving credit for in-stream clean ups. These efforts represent the last chance to remove litter and trash before flowing in to larger and deeper bodies of water. They also represent excellent opportunities to educate volunteers about the importance of stream ecological integrity. The County believes the 10:1 offset ratio is so dilute that it may require far more clean-up events than staff and volunteers are capable of sustaining.

C.10. – CC County #11 – STL

Another issue is the calculation of the trash rate for in-stream clean-ups. It is not clear

what area the proposed trash rate calculations apply. Contra Costa County believes it is inappropriate to assign trash rates for streams, as the stream area itself does not generate trash. It receives it from upland areas that drain to the creek. The County seeks clarification regarding how to use the formula. Should municipal staff assess the trash load (gallons/acre) and assign a trash rate category (low through very high) for the area to be cleaned? Should staff attempt to estimate the drainage area discharging into the clean-up area? Or should a different method be used instead? The County proposes assessing the trash levels in the in-stream clean-up area prior to the clean-up event, using the EOA's reference pictures prior to the clean-up. And, repeating the process after the clean-up. Another option would be to calculate the gallons of trash removed (using a proxy of the number of full trash bags times the gallon volume of each) divided by the number of acres treated (estimated using a GIS tool). Before and after pictures of reference areas should also be required using any protocol.

C.10. – CC County #12 – STL

Issue 11: No credit for trash reduction activities that fail to make a "quantum" change in trash rate

The decision to use broad categories for trash rates has greatly simplified the trash reduction accounting process, but it loses the finesse of crediting efforts that reduce trash levels at less than quantum levels (e.g. from "high" to "medium"). Water Board staff have considered authorizing intermediate credit for actions by allowing post treatment calculations of trash loads at the lowest rate for each category. The County strongly supports this approach. The MRP needs to create incentives to try different approaches or methods that may take time to fully develop benefits. This past Spring residents of Bay Point cleaned up the Bel Aire Trail (a PG&E and EBMUD owned utility corridor). Fifty volunteers cleaned up a staggering amount of trash, but the corridor was still "very high" under the visual assessment. County staff believes future efforts will build upon the initial success. These efforts need to be rewarded.

C.10. – CC County #13 – STL

Issue 12: Diluted offset ratio for actions to reduce direct discharges into Waters of the State

The County appreciates Regional Board's consideration of additional opportunities for trash-challenged communities to take credit for removal of illegal dumped items directly into natural streams and flood control channels. The County is very interested in this program. It will require additional staff resources to fully implement. County staff are concerned the 10:1 offset ratio will not provide a significant enough incentive to justify the costs. The County encourages Regional Board staff to work with interested municipalities to refine the accounting scheme to everyone's benefit.

C.10. – CC County #14 – STL

Issue 13: Requirement to update trash generation rate maps annually is burdensome

Updating trash generation rate maps is not an easy endeavor. The County is actively trying different techniques and focusing on different areas with its limited resources. Trash maps are not static. Calculation of trash reduction and development of maps to reflect trash rates at any given time take a lot of staff effort and taxpayer dollars. The County encourages Regional Board staff to consider when they really need to know this information, and to limit these calculation exercises to these times, for example, the 70% action level in 2017.

C.10. – CC County #15 – STL

Issue 14: Providing credit for activities that lay the foundation for future trash reduction

Contra Costa County has a three tiered strategy to reduce trash in our most trash-challenged communities. To quickly reach the 40% trash reduction requirement the County hired a private company to pick up litter in the road rights of way in our areas with the highest trash rates. County Watershed Program staff dubbed this initial strategy as "trash service." This approach is very expensive and does little to change behaviors of community members. The second tier, called "Self Service," will initiate in FY 2015-16. This approach will use local non-profit organizations to not only conduct on-land and in-stream clean-ups, but also help design and largely implement local education and outreach efforts to lay the foundation for a cultural change to where community members will refrain from littering. The third tier, "No Need for Service" will be the community that produces little or no trash that can enter into the storm drains, local creeks, the Delta, or the Bay.

C.10. – CC County #16 – STL

In order to create the cultural change within trash-challenged communities, the County will need to implement several programs that will not create immediate, tangible trash reduction. They will lay the foundation for the behavior change required to achieve a trash-free community. These activities should be provided some level of credit. Contra Costa County proposes a maximum 5% credit for planned, coordinated, and community-targeted education and outreach programs. Other trash-challenged cities and counties may also benefit from such an approach.

C.12. – CC County #17 – STL

Issue 15: Very few "Old Industrial" properties have the potential to

discharge PCB-tainted sediment in unincorporated Contra Costa County

Unincorporated Contra Costa County has over 1,000 properties that had a land use designation, or zoning, for industrial uses between 1945 and 1980 (the period when PCBs were used). After removing those properties that had been capped with impervious surfaces, redeveloped into other uses, or visually assessed and deemed unlikely to potentially discharge sediment, there were less than 20 properties available to sample for PCBs. Consultants took sediment samples from road rights of way adjacent to these properties, which are currently being analyzed by a local lab. But the small number of sites which could potentially produce PCBs entering into the MS4 brings into question the potential benefits of targeting illicit discharge from old industrial properties.

C.12. – CC County #18 – STL

Issue 16: The County has limited ability to stop PCB-tainted sediment from entering into receiving waters in its most PCB dense areas

The County, like many municipalities, will pursue a three-prong path to achieve Mercury (Hg) and PCB reductions in stormwater. The first, stop PCB-tainted sediment from entering the storm drain system and local receiving waters, will require substantial assistance from the Water Board. County staff are committed to investigating and using its enforcement response plan to require property owners to implement sediment controls to keep PCB-tainted sediment on-site. It will utilize County ordinances to issue fines, if necessary. But municipal fines pale in comparison to administrative civil liabilities issued by the Regional Board. The County anticipates requesting assistance from the Regional Board, and strongly encourages the Regional Board to have adequate staff resources to assist the County and other PCB-challenged communities.

C.12. – CC County #19 – STL

The County will also implement enhanced operations to keep County roads free of PCB-tainted sediment. Unfortunately, the majority of roads adjacent to properties that have high potential for PCBs from old industry do not have curb, gutter, or storm drains. This will make enhanced municipal operations, like street sweeping and storm drain inlet cleaning, ineffective. The County will prioritize these areas for early implementation of the Green Infrastructure Plan.

C.12. – CC County #20 – STL

Issue 17: Majority of properties suspected of containing high levels PCBs are owned by agencies over which the County has no authority

County Watershed staff strongly suspect that the greatest source of industrial legacy PCBs lies in railroad rights of way and areas associated with electrical utilities. The County intends to sample road rights of way adjacent to many of these land uses. If these areas have PCB-tainted sediment, the County has no authority to implement its

Enforcement Response Plan to require the property owner to abate discharge of tained sediment. Contra Costa County will reply on the authority of the Regional Board to take enforcement action. It was disheartening at the June 8, 2015 hearing to hear testimony from the City of Oakland indicating that two years after referring specific properties to the Regional Board, staff had yet to act in tangible ways. The County and other municipalities will need the Water Board to take action quickly against any property owners against whom the municipality has no authority, in order to achieve the mandated Mercury and PCB reductions in stormwater.

C.12. – CC County #21 – STL

Issue 18: Requiring local municipalities to implement PCB site control during demolition may not be effective

The second pathway of achieving PCB reductions is through removal of PCBs during building demolitions. Achieving significant PCB reductions will rely on early and sustained opportunities during the next MRP permit term. However, permitees will have no control over timing of when properties redevelop. Furthermore, a program of this nature, with such widespread impacts, should be implemented by the State, in a manner similar to the asbestos abatement program.

C.12. – CC County #22 – STL

Additionally, it is unclear how much benefit will be gained by containing PCB-laden dust during demolition. The County supports developing a state-wide program to abate dust during demolition of potentially PCB laden buildings, but County Watershed Staff are concerned there may not be enough opportunity or accountability to successfully remove significant levels of PCBs to assist in achieving mandated reductions.

C.3. – CC County #23 – STL

Issue 19: Implementation of the Green Infrastructure (GI) Plan will take longer to initiate than the interim and final timelines in the MRP 2.0

The development of Green Infrastructure Plan will take at least the full permit term to complete. It is a monumental planning effort that will require a paradigm shift by cities and counties regarding roads and stormwater runoff from them. Many of unincorporated Contra Costa County communities developed during the 1945 to 1980 period that will be the focus of the GI Plan. Many of these communities are closely

intertwined with adjacent cities. This will require coordinated efforts with several cities, which only complicates the planning effort. Furthermore, many unincorporated communities lay within the hills or near the Delta/Bay margins, where drainage is particularly challenging to treat. Five years to develop a new plan to treat road run off may not be adequate.

C.11. & C.12. – CC County #24 – STL

Issue 20: Untenable path to compliance for PCBs and Mercury

Because of limited opportunities to abate potentially tainted sediment from entering local waterways, the limited capabilities to implement a program to abate caulk in demolished buildings, and the extraordinary challenges to plan and implement Green Infrastructure, Contra Costa County believes the numeric PCB and Mercury requirements outlined in MRP 2.0 are not feasible.

General – CC County #25 – STL

Considerable time and effort has been spent by both municipal and Water Board staff discussing how to reduce levels of Pollutants of Concern flowing into our waterways, particularly trash and PCBs. Failure to achieve the reductions specified in MRP 2.0 could result in Contra Costa County being held in noncompliance. However, as drafted, MRP 2.0 provides an untenable path for permittees to successfully comply.

General – CC County #26 – STL

The Contra Costa County appreciates the efforts by your staff to develop permit requirements that are implementable and effective in improving surface water quality- a goal which we share. The County is committed to working with the Water Board to achieve the water quality goals and requirement outlined in MRP 2.0. The County encourages Water Board staff to continue meet with Permitees to refine MRP 2.0 to meet our mutual goals to improve water quality within a time and financial framework that is feasible. We look forward to meeting with your staff to resolve of the remaining issues and to implementing MRP 2.0.

Si&;

Cece Sellgren
Stormwater Manager
Contra Costa County Watershed Program

CS:tr
G:\fldcti\NPDES\Administration\MRP 2.0\MRP 2.0 TO Coment letter- CCC Final.docx
C: J. Bueren, Director
5. Kowalewski, Deputy Director
M. Carlson, Flood Control
T. Dalziel, Contra Costa Clean Water Program

D. Jordan, County Watershed Program
M. Mancuso, County Watershed Program
J. Steere, County Watershed Program

July 10, 2015

Bruce Wolfe, Executive Officer
California Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay Street
Oakland, CA 94612
Via email to: mrp.reissuance@waterboards.ca.gov

RE: Comments on the Tentative Order Reissuing the Municipal Regional Stormwater Permit (MRP 2.0)

Dear Mr. Wolfe and Members of the Board:

Thank you for the opportunity to comment on the Tentative Order Reissuing the Municipal Regional Stormwater Permit (MRP 2.0.). The Contra Costa County Flood Control and Water Conservation District (Contra Costa FCD) is very supportive of the San Francisco Bay Regional Water Quality Control Board's (Water Board) efforts to improve water quality in our local creeks, the Delta, and San Francisco Bay. Contra Costa FCD manages over 70 miles of stream channels and 29 detention basins in ten major watersheds in the County. Contra Costa FCD is providing comments regarding Provision C.10 Trash Load Reduction.

Contra Costa FCD greatly appreciates the efforts to remove trash from uplands, riparian areas and streams. Local streams are the last line of defense for trash before it flows into deeper waters where little can be done to address its impacts. Contra Costa FCD has coordinated closely with Contra Costa County and many cities to address potential litter and trash sources. The FCD has taken a leadership role, along with Contra Costa County, in addressing homeless encampments through a multi-disciplinary approach. ▮ gave a presentation earlier this year regarding these efforts.

C.10.e.ii. – CCC FCD #1 – STL

Contra Costa FCD does support the direct discharge program proposed in Provision C.10.e.ii and has concerns the proposed 1:10 credit ratio is so low; many municipalities will choose to not participate due to the costs associated with developing such a robust program.

C.10.e.ii. – CCC FCD #2 – STL

Contra Costa FCD has similar concerns regarding the credit offset for in-stream clean-ups. The Contra Costa FCD's stream facilities are receiving waters and the trash being discharged from storm drains and blown in from upland areas (such as Caltrans rights of way). In stream clean-ups organized by cities, the County, and local creek groups are the last chance to keep litter from flowing into the Delta, San Francisco Bay, and the Pacific Ocean. We believe these efforts should be strongly encouraged. Not only do they remove litter and illegally dumped items from the streams, they provide opportunities for people to be educated about the value of streams. For many people, especially from economically challenged communities, creek clean-ups may be their only experience of streams and riparian areas. The FCD believes that stream clean-ups should be strongly promoted and encouraged by the Water Board. The 1:10 offset ratio undermines these efforts.

C.10. – CCC FCD #3 – STL

Finally, Contra Costa FCD encourages the Water Board to give some kind of credit for education and outreach efforts regarding the value of watersheds and streams. These basic efforts, often targeted at youth, do have an impact on rates of littering and overall care for our local creeks. It may not be measurable using the techniques outlined in MRP 2.0, but we are looking to change societal practices, and although this could take decades, they do have an impact. Cities and counties who engage in focused and sustained outreach programs should also be give trash reduction credit for these efforts. Remember, trash has not just become an issue since the issuance of the MRP; trash has been an issue for societies since the first villages of our ancestors. We in government have been trying for just as long to control the trash, so we will need to be given adequate time to also control the trash entering into our creek system.

Thank you very much for this opportunity to comment on the draft Municipal Regional Permit.

:2%

Michael Carlson
Assistant Chief Engineer

MC:tr
G:\fldcti\NPDES\Administration\MRP 2.0\FCD MRP 2 comment ltr.docx

Thomas E. Dalziel
Program Manager

July 10, 2015

Bruce H. Wolfe, Executive Officer
California Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay Street, Suite 1400
Oakland, CA 94612

Via email to: mrp.reissuance@waterboards.ca.gov

Subject: **Contra Costa Clean Water Program's Opposition to and Comments on the Tentative Order for the Municipal Regional Stormwater NPDES Permit (Order R2-2015-XXXX, NPDES Permit No. CAS612008)**

The Contra Costa Clean Water Program (hereafter CCCWP) appreciates the opportunity to submit these comments on behalf of the twenty-one public agencies comprising CCCWP, which consists of the nineteen incorporated cities and towns, unincorporated Contra Costa County, and the Contra Costa County Flood Control and Water Conservation District. The CCCWP has grave concerns about the Tentative Order for Reissuance of the Municipal Regional Permit (MRP 2.0) and is opposed to its adoption in its current form.

CCCWP along with other Permittees have met with your staff over the past two years to work through various issues. Through these meetings we were able to present extensive input and feedback to your staff.

General - CCWP #84 - DCB

While we found these meetings to be productive in working through many issues and generating new ideas to build upon lessons learned and knowledge gained during MRP 1.0, we were disappointed that too few of the many ideas put forward with sound rationale for the changes we've advocated for, were not incorporated into the draft Tentative Order. These ideas would have helped reduce the administrative burdens on Permittees and prioritize and focus our limited resources on those actions that will maximize improvements to water quality. We urge you to seriously reconsider incorporating the Permittees ideas about reducing cost burdens into the revised MRP 2.0.

Our comments are structured to provide general high level comments within this letter and specific detailed comments in **Attachment 1**. Additional attachments provide supporting details to the comments in Attachment 1. In addition we have provided and reference herein a separate submittal of a red-line of editorial comments directly to your staff to assist them in completing a final edit and polish of the Tentative Order. This letter also incorporates by

reference the Bay Area Stormwater Management Agencies Association's (BASMAA) comment letter submitted and dated July 10, 2015.

General – CCWP #1 - DCB

CCCWP General Comments

1. **Funding Limitations and the Need to Offset the Cost of Major New and Expanded Mandates**

CCCWP is committed to the vision of the MRP 2.0 regarding Green Infrastructure and POC control programs. It is important to recognize that these new and expanded initiatives will take significantly more resources. Permittees do not currently have these resources and developing new funding sources and mechanisms is extremely challenging. CCCWP experienced this first hand in 2012 when it sought to obtain voter approval for a stormwater fee. This fee initiative, a six year planning effort, cost the program over $1.5 million. The property-related fee was rejected by the voters in the county, with a 60% "No" vote. Fee initiative campaigns are expensive and take resources away from other stormwater program efforts. This is not a gamble worth trying again until changes are made at the legislative level to recognize stormwater management as a utility, like sewer, water and refuse services. CCCWP invites the Regional Water Board to be a partner to help change the state constitution and law that would allow stormwater to be treated the same water and wastewater utilities.

General – CCWP #2 - DCB

In the absence of dedicated funding for the stormwater program, stormwater programs have relied upon grants from state and federal agencies. More than $10 million in grant funding was secured for regional stormwater quality projects to support MRP 1.0 requirements. CCCWP appreciates the Regional Water Board's support in securing these past grants and welcomes the continued collaboration to secure grants for on-going and MRP 2.0 initiatives. In particular, support and advocacy for green infrastructure projects – specifically to include these costs into transportation project funding – will be critical to getting the state and regional transportation agencies to include these features as allowable cost and budget items.

General – CCWP #3 - DCB

Without new funding sources or maintaining a cost neutral program, Permittees will be asked to draw compliance resources from general funds or other program funds. For instance, green infrastructure planning and implementation costs are likely to come from local agency

transportation budgets. Projects will cost more and as a result fewer projects will be built and maintenance will be deferred longer. This is an unintended consequence that the Permittees want to avoid.

The Regional Water Board must acknowledge its role in this effort to adequately fund stormwater compliance programs and work collaboratively with Permittees to secure dedicated funding via changes in legislation and opportunistic grants. The Regional Water Board must also acknowledge the inherent uncertainty in these efforts, and the fact that four previous attempts to amend the constitution to allow for stormwater to be funded the same way water and wastewater utilities are funded have failed.

General – CCWP #4 - DCB

Throughout the MRP 2.0 development process, Regional Water Board staff and management have requested that Permittees identify lower value or "less beneficial tasks" that take time and resources without returning a benefit to water quality. CCCWP provided this information in its Report of Waste Discharge submitted in June 2014. We were disappointed that our recommendations for reductions were not included in MRP 2.0. POC and trash control programs and Green Infrastructure planning will take significantly more resources and cannot happen unless offset by reductions in lower value efforts.

C.11, C.12 – CCWP #5 - DCB

2. Need for a Clear Path to Compliance for Green Infrastructure and PCBs and Hg TMDLs

Provision C.12 requires the Permittees to demonstrate a total cumulative MRP area-wide PCBs load reduction of 3 kg/yr. over the permit term. Provision C.12 does not provide Permittees with a clear and feasible pathway to attaining compliance with this load reduction performance standard. From a municipal government perspective, new financial and staffing commitments must be based on agreed upon goals and objectives, and have well-defined metrics for measuring progress. The load reduction performance criteria should not be the point of compliance, and Regional Water Board staff should work with Permittee representatives to revise the Tentative Order so that it provides a clear and feasible pathway for Permittees to attain compliance. Most factors that are key to meeting the load reduction performance criteria are uncertain and many are not within Permittee control (e.g., extent of source properties that will be found, building demolition rates, and redevelopment rates), making achievement of compliance uncertain. In order for Provision C.12 to provide Permittees with a clear and feasible pathway to attaining compliance, the load reduction performance criteria needs be informed by and consistent with the final and agreed upon interim accounting method.

Compliance should be based upon implementing PCBs and Hg control programs designed to achieve the load reduction performance criteria.

Furthermore, PCBs load reduction performance metrics need to be described in MRP 2.0 in the form of action levels. Regional Water Board staff has acknowledged that load reduction performance metrics are not effluent limits, so this understanding should be explicit in MRP 2.0. Describing the performance metrics as action levels coupled with a clear control program, and accounting method, will compel Permittee action, provide accountability to the Regional Water Board, and alleviate the Permittees concerns regarding the potential third party lawsuits for not meeting the numbers when good faith actions and solid efforts by Permittees consistent with MRP 2.0 requirements does not result in achievement of the load reduction performance criteria.

C.3, C.11, C.12 – CCWP #6 - DCB

CCCWP requests MRP 2.0 base compliance on implementation of PCBs and Hg control programs designed to achieve the load reduction performance criteria using an *a-priori* agreed upon interim accounting method and to restate the load reduction performance criteria as action levels. Compliance assessments would be based upon the Permittees good-faith demonstration of actions and effort consistent with these control programs. This approach is warranted based on the significant level of uncertainty, recognized by your staff and the Permittees, in the available data, models and assumptions in the accounting methods. CCCWP recommends the inclusion of a statement in MRP 2.0 that acknowledges this, such as "If the PCBs load reduction performance criteria are not achieved, then Permittees shall demonstrate reasonable and demonstrable progress toward achieving the criteria though the implementation of the control programs."

C.3, C.11, C.12 – CCWP #7 - DCB

Section C.3.j needs to be made more consistent with the technical assumptions presented in Provisions C.11 and C.12 and in the corresponding portions of the Fact Sheet. In particular, the load reductions to be achieved through implementation of "green infrastructure," presented in Provisions C.11 and C.12, include public retrofits and private redevelopment; however, in Provision C.3.j, "green infrastructure" refers to public retrofits only.

General, C.11, C.12 – CCWP #8 - DCB

3. Permit Timelines – First twelve months after the effective date

Various Permit provisions include compliance timelines; however, these timelines for individual provisions have not been coordinated across the Permit as a whole. Requiring aggressive implementation of multiple programs within the same timeframe—many of these Provisions

have submittal dates within the first year of the Permit term—creates an untenable situation for the CCCWP and our Permittees. For example, Provisions C.11 and C.12.a.iii (1) require a list of watersheds (or portions therein) where mercury and PCBs control measures are currently being implemented and those in which control measures will be implemented by February 1, 2016, just two months after the permit effective date. Additionally, provision C12.a.ii (4) requires the reporting of "Permittee-specific load fractions" for PCBs reductions by April 2016. More time is needed for CCCWP to work with BASMAA to collaborate and coordinate consistent means and methods for complying with these mandates.

The draft Order contains a plethora of requirements for implementation and/or reporting in the first twelve months after the MRP effective date (see **Attachment 2**). Implementation of these requirements may not be feasible in this timeframe, given the degree of planning and coordination for each requirement and limited Permittee resources. CCCWP asks that the Regional Water Board extend identified deadlines twelve months to allow for outreach, budgeting, and regional collaboration and coordination.

Additionally, the proposed permit effective date of December 1, 2015, falls in the middle of Fiscal Year (FY) 2015/16. Budgets for FY 2015/16 were adopted in the spring of 2015. Planning and budgeting for required compliance mandates in MRP 2.0 must be addressed in FY 2016/17 budgets, which are adopted in the spring of 2016.

CCCWP requests that the Regional Water Board review the deliverables required within the first twelve months of the permit effective date and make appropriate reductions or elimination of lower value tasks, streamline and/or combine required reports, and provide more time for planning and implementation of new tasks that will need to be included in future budgets and that will require countywide and/or regional collaboration and coordination.

C.10 – CCWP #9 - DCB

4. Trash Load Reduction

Trash was a major focus of MRP 1.0, and continues to be at the forefront of CCCWP's stormwater control efforts. Permittees spent enormous amounts of time and resources to meet the 40% reduction by July 1, 2014. Trash reductions have now become increasingly more challenging with higher percentage reduction goals. Furthermore, the trash reduction approach and accounting methodology for measuring trash reductions changed significantly during MRP 1.0, requiring a major redirection of Permittee efforts resulting in lost time and opportunities. Because of this, the proposed deadline of 70% reduction by July 1, 2017, must be extended to provide sufficient time for Permittees to ramp-up their new and refined trash load reduction programs.

C.10 – CCWP #10 - DCB

Meeting the higher percentage reduction goals will result in significant increases in capital, operating and maintenance costs for which some municipalities have not yet identified funding. During MRP 1.0, Permittees received $5 million dollars in grant funding for the purchase of full

trash capture devices. These funds played a significant role in Permittees efforts to meet the 40% trash load reduction goal. Permittees need until the end of the MRP 2.0 term to secure additional funding to achieve 70% reduction. CCCWP asks that the Regional Water Board delay identified deadlines to allow for regional collaboration and additional time for the coordination, funding and outreach which is necessary in order to effectively reduce trash in MS4s. The timelines CCCWP is requesting are consistent with the Trash Amendments[1].

C.10 – CCWP #11 - DCB

Compounding the challenge to meet the higher trash load reductions are: 1) changes to the formula that reduced the credit allowed for the beneficial efforts of source control and creek and shoreline clean-ups; and,

C.10 – CCWP #12 - DCB

2) the addition of resource intensive tasks of annual mapping of trash control devices and storm drainage systems on private lands, including, in some cases, residential parcels. Permittees do not have the capacity or resources to perform these tasks, which provide no water quality benefit, while increasing efforts to meet the higher trash load reductions.

C.10 – CCWP #13 - DCB

At the July 8 Regional Board hearing, a Water Board member suggested as a means to fund trash reduction efforts, that cities impose regulatory fees on litter-prone items. The use of regulatory fees by local government to address litter issues had been successful in the past. In 2006, the City of Oakland had passed a litter fee (regulatory fee) on fast-food restaurants, gas stations, and convenience stores to help pay for costs associated with litter and trash clean-ups. However, Proposition 26, approved by California voters in 2010, has likely effectively eliminated the ability to use a regulatory fee for stormwater management costs, without a balloted two/thirds majority approval. These establishment of regulatory fees as a means to fund trash load reduction programs is viewed with extreme legal risk and imminent legal challenge.

[1] Amendments to the Statewide Water Quality Control Plans for the Ocean Waters of California to Control Trash and Part 1 Trash Provisions of the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California

Should you have any questions or would like to meet to discuss these general or specific comments, please contact me at (925) 313-2392 or Tom.Dalziel@pw.cccounty.us.

I appreciate your consideration of CCCWP's comments.

Sincerely,

Thomas Dalziel
Program Manager
Contra Costa Clean Water Program

CC:
Tom Mumley, SFBRWQCB Assistant Executive Officer
Keith Lichten, SFBRWQCB, Chief, Watershed Management Division
Geoff Brosseau, BASMAA, Executive Director
Jolan Longway, CCCWP, Management Committee Chair

Enclosures:
Attachment 1. Detailed comments on Order No. R2-2015-XXXX
Attachment 2. Some of the compliance deadlines in the first twelve months after the MRP 2.0 effective date

Attachment 1

This attachment provides CCCWP's detailed comments, listed in order of permit provision. Each comment identifies CCCWP's concern, and the proposed solution.

General – CCWP #14 - DCB

Multiple Provisions

Comment 1. The draft Order contains many requirements for implementation and/or reporting within the first 12 months after the proposed permit effective date of December 1, 2015. It must be understood and acknowledged in MRP 2.0 that December 1, 2015 falls in the middle of Fiscal Year 2015/16. Municipal budgets, which were adopted in spring 2015, are already established. The financial resources needed to implement many of the new requirements will not be available. All effective dates for new provisions with substantial financial and staffing resources must be delayed to provide time to be included in FY 2016/17 budgets, which will be adopted in spring 2016, and to provide the time necessary for countywide and/or regional planning and coordination for each requirement.

*Action desired: Delay identified deadlines **at least** one year from the July 1, 2016 deadline to allow for budgeting in spring 2016, and additional time necessary for countywide and/or regional collaboration and coordination.*

General, C.3.h.v.(4), C.6.e.iii.(1), C.10.f.iii) – CCWP #15 - DCB

Comment 2. The use of the term "certify" for various provisions throughout the draft MRP 2.0, particularly for various provisions requiring annual reporting, is redundant (e.g., C.3.h.v.(4), C.6.e.iii.(1), C.10.f.iii) . The entire Annual Report must be certified, and requiring certification of each specific provisions within the permit will create additional unnecessary work and confusion.

Action desired: Find and delete these unnecessary and redundant requirements to "certify" compliance with specific provisions. Provision C.17.c already adequately addresses this issue (i.e., "The Permittees shall certify in each Annual Report that they are in compliance with all requirements of the Order.").

C.2.f. – CCWP #16 - DCB

C.2.f Corporation Yards

Comment 1. Municipalities are implementing their Corporation Yard Stormwater Pollution Prevention Plans (SWPPPs), which include routine inspections. Requiring pre-rainy season inspections and inspection data collection, and reporting are unnecessary and should be eliminated. This is a "less beneficial" task without a substantial water quality benefit.

Action desired: Eliminate the corporation yard inspection reporting requirements.

"ii. Implementation Level

(2) Routinely inspect corporation yards, according to the Corporation Yard SWPPP, to ensure that non-stormwater discharges are not entering the storm drain system and pollutant discharges are prevented to the maximum extent practicable. ~~At a minimum, each corporation yard shall be fully inspected each year between September 1 and September 30.~~ Active non-stormwater discharges shall cease immediately. Corrective actions shall be implemented before the next rain event, but no longer than ~~10~~30 business days after the potential and/or actual discharges are discovered. Corrective actions can be temporary and more time can be allowed for permanent corrective actions. If more than ~~10~~30 business days are required for compliance, a rationale shall be recorded.

iii. Reporting. The Permittees shall list activities conducted in the corporation yard ~~that have~~and BMPs in the site specific SWPPP~~, date of inspections, the results of inspections, and any follow-up actions,~~ including the date of any necessary corrective actions ~~were~~ implemented, in their Annual Report."

C.3. – CCWP #17 - DCB

C.3 New Development and Redevelopment

Comment 1. At an October 2, 2014 MRP 2.0 Steering Committee meeting with high-level municipal officials, Regional Water Board staff encouraged Permittees to share draft Permit language, then under development by the BASMAA Development Committee, to streamline and improve implementation of Provision C.3. CCCWP sent this language to Regional Water Board staff on October 8, 2014. No response was received. In CCCWP's view, the subsequent Tentative Order misses opportunities to significantly improve the breadth, consistency, and technical quality of C.3 implementation regionally, while substantially reducing the effort required for its implementation. The October 8, 2014 email and the draft Permit language included with that email are attached to this letter and incorporated into these comments (**Attachment 1-A**).

C.3.b.i. – CCWP #18 - DCB

C.3.b.i Regulated Projects

Comment 1. This provision requires Permittees to require LID treatment on development projects with tentative maps or development agreements approved prior to February 2005 (the C.3 start date under Contra Costa's pre-MRP Permit). However, Permittees' imposition of additional requirements on entitled development projects would potentially conflict with state law and with existing development agreements.

Action desired: Allow municipalities flexibility to require applicants for these development approvals to implement stormwater treatment requirements only to the extent not in conflict with state law and existing development agreements.

C.3.b.ii.(4) – CCWP #19 - DCB

C.3.b.ii.(4) Roads Projects

Comment 1. This Provision retains the applicability of Provision C.3 to certain road improvement projects, even though Provision C.3.j sets forth a comprehensive long-term approach to achieving the retrofit of streets and drainage systems with Green Infrastructure.

Action desired: Delete this requirement.

C.3.b.ii.(1)(c) 50% rule – CCWP #20 - DCB

C.3.b.ii.(1)(c) 50% Rule

Comment 1. This Provision requires projects where 50% or more of existing impervious area is redeveloped to provide treatment for the entire area. The requirement pre-dates the LID requirements. With new design requirements promoting the use of LID facilities distributed throughout a development site, rather than building one large detention basin to serve the entire site, this requirement can require applicants to retrofit areas, including plazas and buildings with underground drainage pipes, that are otherwise left untouched by additional development on the same site. Regional Water Board staff has stated the purpose of this rule is to promote retrofit of existing development, an objective which is now addressed by the new Provision C.3.j.

Action desired: Delete this requirement.

C.3.e.ii. – CCWP #21 - DCB

C.3.e.ii. Special Projects

Comment 1. In at least one specific, documented case in Contra Costa County, a developer deleted a planned and negotiated pedestrian plaza from a development project in a downtown, pedestrian-oriented shopping area so that the development would achieve the gross density required for C.3 "Special Projects" status.

Action desired: To avoid this disincentive for including pedestrian amenities, allow public plazas to be omitted from calculation of project gross density. Include previously recommended changes for footnote 6, as shown below.

"[6]**Floor Area Ratio** – The Ratio of the total floor area on all floors of all buildings at a project site (except structures or floors dedicated to parking) to the total project site area (excluding any area dedicated to public plazas)."

C.3.e.v.(1) – CCWP #22 - DCB

C.3.e.v.(1) Special Projects Reporting

Comment 1. This provision requires permittees to track Special Projects that have been identified (i.e., an application for development approval has been submitted) but for which no development approval has been given. The purpose of this requirement in MRP 1.0 was to provide Regional Water Board staff with an early opportunity to evaluate the effects of the

Special Projects provision. BASMAA has submitted information covering two years of development throughout the region and showing that the number of Special Projects, and the amount of impervious area attributable to Special Projects, is very small when compared to the total amount of development subject to Provision C.3.

Action desired: Delete this requirement.

C.3.e.v.(2) Special Projects Reporting– CCWP #23 - DCB

Comment 1. This provision requires Permittees to conduct and document an analysis of the feasibility of LID treatment for Special Projects. The purpose of this requirement in MRP 1.0 was to provide Regional Water Board staff with an early opportunity to evaluate the effects of the Special Projects provision. BASMAA has submitted information covering two years of development throughout the region and showing that the number of Special Projects, and the amount of impervious area attributable to Special Projects, is very small when compared to the total amount of development subject to Provision C.3. Further, the proportion of LID treatment implemented is high, even where non-LID treatment could be used.

Action desired: Delete this requirement.

C.3.g.iv HM Standard— Simulation of Erosion Potential – CCWP #24 - DCB

Comment 1. This provision allows the Permittees to propose an additional method, using direct simulation of erosion potential, by which to meet the hydromodification management (HM) Standard. There is an inconsistency between the Fact Sheet and Tentative Order. The Fact Sheet indicates the Executive Officer can approve the additional method, and the Order specifies the method be submitted to the Board for review and shall not be effective until adopted by the Board as a permit amendment. This is the only Provision in the Tentative Order that contemplates an amendment during the permit term. As the methodology would only change the means and methods for meeting the HM Standard previously adopted by the Board, and would not constitute any material change to the HM Standard, a permit amendment is not needed.

Action desired: Make the language in the Tentative Order consistent with that in the Fact Sheet, as shown:

> **"C.g.iv HM Standard – Methodology for Direct Simulation of Erosion Potential -** The Permittees may, collectively, propose an additional method, using direct simulation of erosion potential, by which to meet the HM Standard in Provision C.3.g.ii. Such a method shall be submitted to the Board for review and shall not be effective until ~~adopted by the Board as a Permit amendment~~ approved by the Executive Officer."

C.3.g.vi. Implementation Level and C.g.vii Reporting – CCWP #25 - DCB

Comment 1. Provision C.3.g.vi states that "For Contra Costa Permittees, Projects receiving final planning entitlements on or before one year after the Permit effective date may be allowed to use the Contra Costa design standards from the Previous Permit." Provision C.3.g.vii. states that Contra Costa Permittees shall, with the first Annual Report following the Permit's effective date, submit a technical report consisting of an HM Management Plan describing how Contra Costa will implement the Permit's HM requirements (e.g., how it will update or modify its practices to meet Permit requirements.)"

Under MRP 1.0, Contra Costa Permittees require applicable development projects to incorporate LID facilities (Integrated Management Practices, or IMPs) that provide both treatment and HM. This is different from other counties, where flow-duration-control detention basins are used, sometimes in series with LID facilities, to achieve HM requirements.

Under MRP 1.0, to show that their individual development project meets the HM standard, Contra Costa applicants may choose to apply a continuous simulation runoff model, with 30 or more years of hourly rainfall data, or they may use standard designs for IMPs with sizing factors. The sizing factors are derived from CCCWP's continuous simulation runoff model, and account for differing soil types and rainfall patterns at development sites. Most applicants—particularly those for smaller developments—use the sizing factors.

Regional Water Board staff commissioned an independent analysis of CCCWP's continuous simulation runoff model, including a review of default values for key model parameters and a comparison to the basin-oriented Bay Area Hydrology Model (BAHM) approach used in other MRP counties. That study found that the CCCWP continuous simulation runoff model produced sizing factors were overly conservative, and stated that the results of the analysis "suggest that Contra Costa would do well to calibrate their [model] to local conditions."[2]

MRP 1.0 required CCCWP to conduct a Model Calibration and Validation Project to monitor the performance of IMPs built using the current (2009) standard designs and sizing factors. This study was completed during 2011-2013 at a cost of over $300,000, and a final report was submitted with CCCWP's Annual Report in September 2013.

The final report concludes: "This project demonstrated that the IMPs and sizing factors approved by the Regional Water Board in 2006—and updated in subsequent editions of the *Guidebook*—are adequate to meet current regulatory requirements."

CCCWP has not received any comments from Regional Water Board staff on the September 2013 report.

As the designs and sizing factors meet the current standard, and the Tentative Order proposes that the same standard be continued in the coming Permit term, there is no need for an extension of time to use current design standards. Nor is there any need for an additional technical report. Rather, CCCWP should be allowed to continue to use the current sizing factors

[2] Memorandum from Jonathan Butcher, Tetra Tech, Inc., to Janet O'Hara, "Comparison of BAHM and Contra Costa Approaches for Hydromodification Management Plan Requirements," December 7, 2007 (incorporated by reference into these comments).

while collaborating with Permittees in other counties in a regional effort to update the methodology used to size HM facilities (direct simulation of erosion potential, as provided in proposed Provision C.3.g.iv.).

Action desired: Delete the Contra Costa-specific language from C.3.g.vi and C.3.g.vii.

C.3.h Operations and Maintenance of Stormwater Treatment Systems - CCWP #26 - DCB

Comment 1. This Provision, continued from MRP 1.0, requires that, at a minimum, the Operations and Maintenance (O&M) Inspection Plan must specify the following for each fiscal year: Inspection by the Permittee of at least 20% of the total number (at the end of the preceding fiscal year) of Regulated Projects, offsite projects, or Regional Projects, in addition to the requirement that all Regulated Projects be inspected at least once every five years. Permittees should have the flexibility to perform more or less each year, depending on what they determine is appropriate, so long as all Regulated, offsite and Regional Projects are inspected by year five.

Action desired: Require that all Regulated, Offsite and Regional Projects are inspected by end of permit term, with no annual milestones.

C.3.b and C.3.h., C.17 - CCWP #27 - DCB

Comment 2. The reporting requirements of Provisions C.3.b and C.3.h. are poorly coordinated with each other and with the typical municipal development review process. During MRP 1.0 term, this lack of coordination resulted in apparent anomalies in Permittee reporting, leading to Regional Water Board staff inquiries and, on the Permittee side, time lost responding to those inquiries. The need to update C.3 reporting requirements was identified during MRP 2.0 negotiations, but was not followed through in time for issuance of the Tentative Order.

Action desired: Include authorization for the Permittees to collectively propose an updated reporting system, such as entry of project data to a publicly accessible relational database, and to implement the updated reporting system following Executive Officer approval.

C.3.j Green Infrastructure Planning and Implementation - CCWP #28 - DCB

Comment 1. This provision continues to be the most challenging and most uncertain portion of C.3 in terms of determining what will constitute compliance. The language needs to be made more consistent with the expectations in Provisions C.11 and C.12. Discussions with Regional Water Board staff on C.11 and C.12 have suggested that load reductions can be accomplished by public retrofits and private development and redevelopment, whereas C.3.j only refers to public retrofits.

Action desired: Make it explicit in C.3.j (as well as in C.11 and C.12) that private development and redevelopment as well as public projects will count toward meeting POC

load reductions. Efforts during MRP 2.0 term should focus on planning and opportunistic implementation where feasible.

C.3.j.i (1) Green Infrastructure Program Plan Development - CCWP #29 - DCB

Comment 1. The green infrastructure (GI) framework has to be developed and approved by local governing bodies within one year (by 12/1/16) and then reported in the 2017 Annual Report (9/15/17). This is a very short timeframe given the effort required to coordinate and educate upper level staff and elected officials, prepare the framework, conduct resource planning, and accommodate lead times for bringing the framework to governing bodies.

Action desired: Extend the timeframe for approval to the reporting date (9/15/17), which would provide an additional 9 months.

"Green Infrastructure Program Plan Development

Each Permittee shall:

Prepare a framework (i.e., a plan containing specific tasks and timeframes) for development of its Green Infrastructure Plan and have the framework approved by the Permittee's governing body, mayor, city manager, or county manager ~~within 12 months of the Permit effective date~~by the second Annual Report following permit adoption."

C.3.j.i (1) Green Infrastructure Program Plan Development - CCWP #30 - DCB

Comment 2. Item (1) (a) requires prioritization and mapping of potential and planned projects. This will be a major, resource-intensive effort, which may not be completed within two years. Additional flexibility in approaches to mapping and prioritization is needed. In addition, the time intervals for planning should be made consistent with the time intervals for load reductions in C.11 and C.12 (i.e., 2020 and 2030).

Action desired: The mechanisms used to develop the GI Plan and priorities should include other less complex tools in addition to GreenPlan-IT. Change the time intervals to 2020, 2025, and 2030.

"1. A mechanism ~~(e.g., SFEI's GreenPlanIT tool)~~ to prioritize and map areas for potential projects and planned projects, on a drainage-area-specific basis, for implementation over the following time schedules:

a. 2020~~Within 2 years of the Permit effective date~~;

b. 2025~~Within 7 years of the Permit effective date (5-year horizon)~~; and

c. 2030~~Within 12 years of the Permit effective date (10-year horizon)~~.

The mechanism shall include criteria for prioritization (e.g., specific logistical constraints, water quality drivers (e.g., TMDLs), opportunities to treat runoff from private parcels in retrofitted street right-of-way, etc.) and outputs (e.g., maps, project lists, etc.) that can be incorporated into Permittees' long-term planning and capital improvement processes."

C.3.j.i (1) Green Infrastructure Program Plan Development - CCWP #31 - DCB

Comment 3. Item (1) (c) requires the timeframes for establishing "targets" for amount of impervious surface retrofitted, which do not line up at all with the C.11 and C.12 load reduction timeframes. It is unclear how these targets are to be established by each Permittee.

Action desired: Allow the development of "projections" instead of "targets", and allow Permittees to include projected private development as well as public projects. Allow the projections to be developed for the years 2020, 2030, 2040, and 2065, consistent with C.11 and C.12.

"(c) ~~Targets~~Projections for the amount of impervious surface within the Permittees' jurisdiction to be retrofitted over the following time schedules:

d. 2020~~Within 2 years of the Permit effective date~~;

e. 2030~~Within 7 years of the Permit effective date (5-year horizon)~~;

f. 2040~~Within 12 years of the Permit effective date (10-year horizon)~~; and

g. 2065.~~Within 27 years of the Permit effective date (25-year horizon); and~~

~~h. Within 52 years of the Permit effective date (50-year horizon).~~"

C.3.j.ii Early Implementation of Green Infrastructure Projects (No Missed Opportunities) - CCWP #32 - DCB

Comment 1. It is unclear how compliance with this provision will be determined. CCCWP recommends that the review process be better defined and objective, in order to avoid disagreements with Regional Water Board staff as to what are "missed opportunities".

Action desired: Add the following language, which would allow for consistent review of CIP projects for GI opportunities, based on specified criteria.

"(3) Permittees shall review and analyze appropriate projects within the Permittee's capital improvement program, and for each project, assess the opportunities and associated costs of incorporating LID into the project. The analysis shall consider factors such as grading and drainage, pollutant loading associated with adjacent land uses, uses of available space with the project area, condition of existing infrastructure, opportunities to achieve multiple benefits such as providing aesthetic and recreational resources, and potential availability of incremental funding to support LID elements along with other relevant factors… Permittees will collectively evaluate and develop guidance on the criteria for determining practicability of incorporating green infrastructure measures into planned projects."

C.4.c, C.5.b, C.6.b Reporting -CCWP #33 - DCB

Comment 1. These provisions indicate that "corrective actions shall be implemented before the next rain event, but no longer than 10 business days after the potential and/or actual non-stormwater discharges are discovered." Requiring a 10 day response for potential discharges results in all observed problems being handled as high priority, which will increase the

inspection costs and reduce the total number of sites that can be inspected in a year. Furthermore, requiring that every observed problem requires follow-up within 10 business days creates a disincentive for inspectors to proactively identify and communicate potential problems to site operators because it will require the inspector to complete the prescriptive follow-up and documentation requirements. Not every observed "potential" non-stormwater discharge should nor needs to be deemed a priority. Verbal warnings and warning notices can be effective and efficient Tier 1 enforcement response tools for inspectors to identify and address observed problems without triggering the more time intensive follow-up, documentation, and reporting requirements. . Permittee inspectors and contractors need to be able to use their expertise and best professional judgement to determine how best to allocate their time to provide the maximum number of inspections with the maximum benefit for water quality. Existing guidance allows Permittees up to 30 days to ensure that corrective actions were implemented for potential discharges.

<u>Action desired:</u> Allow the current 30 days for corrective actions to be implemented for potential discharges. Example provided below.

"C.4.c.ii (3) Timely Correction of Potential and Actual Non-stormwater Discharges – A description of the Permittee's procedures for assigning due dates for corrective actions. Permittees shall require timely correction of all potential and actual non-stormwater discharges. Permittees shall require active non-stormwater dischargers to cease immediately. Corrective actions shall be implemented before the next rain event, but no longer than ~~10 business~~ <u>30</u> days after the potential ~~and/or actual~~ non-stormwater discharges are discovered. Corrective actions can be temporary and more time can be allowed for permanent corrective actions. If more ~~than 10 business day are~~ <u>time is</u> required for compliance, a rationale shall be recorded in the electronic database or equivalent tabular system."

<u>C.4.d Reporting - CCWP #34 - DCB</u>

Comment 1. The reporting requirements for C.4.d represent a "less beneficial" task that lacks substantial water quality benefit for the Permittees. Due to the excessive nature of the reporting requirements, Permittees will need to spend considerable resources on reporting, which would be better spent on other higher value tasks.

<u>Action desired:</u> Reduce the excessive data collection and reporting requirements. Examples of excessive data collection and reporting requirements include:

- *the number of inspections;*
- *the number of each enforcement action;*
- *the number of enforcement actions resolved in 10 working days, or otherwise deemed resolved in a longer but still timely manner*
- *facilities that are required to have coverage under the General Industrial Permit but have not filed; and,*
- *the dates of trainings, training topics covered, and percentage of inspectors attending training.*

C.5.e Control of Mobile Sources - CCWP #35 - DCB

Comment 1. Provision C.5.e requires that Permittees provide a summary of specific outreach events and education conducted for each type of mobile business operating within a Permittee's jurisdiction, provide a list of mobile businesses operating within a Permittee's jurisdiction, and develop a separate ERP to address mobile businesses. The language for this section remains very vague, especially as it relates to mobile businesses. It is unclear how Permittees can identify all mobile businesses operating within their jurisdiction, as these businesses operate in several municipalities. Not all municipalities require business licenses, and even when required, some mobile businesses may not obtain licenses for all of the municipalities they operate in. Furthermore, the development of any type of inventory by a Permittee would not include those businesses located in neighboring counties outside of the MRP jurisdictions. The current ERP is adequate to address mobile businesses and does not require revision. Also, there is not enough time to address all the 2016 Annual Report requirements (i.e., minimum BMPs for each business type, enforcement strategy, list and summary of specific outreach events and education conducted to different business types, number of business in jurisdiction, number of inspections conducted at business or job site) which should be coordinated regionally.

Action desired:

- *Clarify the language regarding the identification of mobile businesses operating in a Permittee's jurisdiction. Clarify that these businesses are being addressed through the inspection program as issues are identified. Require Permittees to address mobile businesses through business inspections.*
- *Remove requirement to develop a separate ERP.*
- *Extend the 2016 Annual Report requirements to 2018 Annual Report to provided sufficient time for MRP Permittee collaboration, development and implementation of a regional program.*

C.6.e.iii Construction Site Control – Reporting - CCWP #36 - DCB

Comment 1. Reporting on the "Number of Violations" is inconsistent with Provision C.6.b.ii (3), which requires timely correction for all potential and actual discharges.

Action desired: *Revise the reporting requirements to be internally consistent. This would allow the annual reporting process more efficient and effective.*

> C.6.e.iii (2)(g) Number of actual discharges ~~violations~~ fully corrected prior to the next rain event, but no longer than 10 business days after the actual discharges ~~violations~~ are discovered or otherwise considered corrected in a timely, though longer period; and

C.7 Public Information and Outreach - CCWP #37 - DCB

Comment 1. Many of the permit requirements throughout Section C.7 are duplicated in multiple subsections, as well as throughout the entirety of the Permit.

Action desired: *Consolidate public information and outreach requirements throughout the permit into this section and cross-reference it from other sections.*

C.7.a Storm Drain Inlet Marking -CCWP #38 - DCB

Comment 1. This provision requires that Permittees mark and maintain municipally-maintained storm drain inlets with an appropriate stormwater pollution prevention message, such as "No Dumping, Drains to Bay", or equivalent. However, this action has been located in the wrong place, and should be moved to Provision C.2 for maintenance of the markers, and C.3 for installation of the markers on development projects.

Action desired: *Remove the provision for storm drain inlet marking from Provision C.7., and move to its proper location in Provision C.2 and C.3.*

C.7.b Advertising Campaigns -CCWP #39 - DCB

Comment 1. The language for this provision specifies that Permittees shall continue to participate in or contribute to advertising campaigns, with the goal of significantly increasing overall awareness of stormwater runoff pollution prevention messages and behavior changes in target audiences. However, the word "advertising" is antiquated, and should be modernized with the term "outreach," as the word "outreach" is a much broader term that includes social media and in-person events, in addition to traditional advertising media, such as radio, TV, and billboards.

Action desired: *Change the word "Advertising" to "Outreach" throughout the provision, as the term "advertising" is more commonly associated with traditional media and is not inclusive of all the outlets Stormwater Programs employ to reach audiences.*

C.7.b Advertising Campaigns -CCWP #40 - DCB

Comment 2. Additionally, CCCWP requests that language referring to two campaigns and specific messaging be deleted. CCCWP would like the option to focus on one campaign if it is determined to be beneficial. For instance, a single campaign could allow for development of a sustained, long-term outreach effort analogous to "Spare the Air", "Keep Tahoe Blue", and "Only You Can Prevent Forest Fires". The proposed draft MRP 2.0 requires our limited public outreach resources be spread too thin, and precludes a countywide and/or regional 'branding' effort that might result in greater public recognition and long-term value in increasing awareness of water quality issues and solutions.

Action desired: *Eliminate reference to two campaigns and a specific message.*

C.8.d.ii Temperature- CCWP #41 - DCB

Comment 1. The temperature triggers defined in provision C.8.d.ii (4) attempt to create a "one-size-fits-all" temperature across all existing watersheds. This is problematic, as this type of temperature trigger does not acknowledge any other existing watershed specific temperature thresholds developed through other regulatory processes (e.g., agreements with National Marine Fisheries Service (NMFS)).

<u>Action desired:</u> Include language to the provision which states that the Permit's temperature triggers are held in deference to existing watershed specific temperature thresholds developed through other regulatory processes (e.g. agreements with NMFS).

"Follow-up – The Permittees shall consider conducting a SSID project when results at one sampling station exceed the applicable temperature <u>trigger(s)</u> or demonstrate a spike in temperature with no obvious natural explanation. The temperature trigger is defined as when two or more weekly average temperatures exceed the Maximum Weekly Average Temperature of 17.0°C for a Steelhead stream, or when 20% of the results at one sampling station exceed the instantaneous maximum of 24°C. <u>Where existing watershed-specific temperature thresholds were developed through other regulatory processes (e.g. agreements with NMFS), these thresholds prevail.</u> Permittees shall calculate the weekly average temperature by breaking the measurements into non-overlapping, 7-day periods."

C.8.d.v Toxicity and Pollutants in Sediment- CCWP #42 - DCB

Comment 1. The contaminants listed in Table 8.2 of this provision include parameters that are costly to analyze the Permittee and have low water quality benefits. Examples of this type of high cost / low benefit parameters include PCBs, mercury, and organochlorine pesticides.

<u>Action desired:</u> Remove the high cost, low benefit analytes (PCBs, mercury, and organochlorine pesticides) from Table 8.2.

Table 8.2 Sediment Toxicity & Pollutants Analytical Procedures

Test Species or Pollutant	Units	Laboratory Method
Hyalella azteca and Chironomus dilutus survival	Pass/Fail using TST, % Effect	EPA-600/R-99-064
~~PCBs~~		
~~Total Mercury~~		
Pyrethroids: bifenthrin, cyfluthrin, cypermethrin, deltamethrin, esfenvalerate, lambda-cyhalothrin, permethrin		EPA 3540C followed by EPA 8270D by NCI-GCMS
Carbaryl		
Fipronil		
~~Organochlorine pesticides: Chlordane, Dieldrin, Sum DDD, Sum DDE, Sum DDT, Endrin, Heptachlor epoxide, Lindane~~		
(gamma-BHC)		
Total PAHs		
Arsenic, Cadmium, Chromium, Copper, Lead, Nickel, Zinc		
Total organic carbon		
Grain size		

Comment 2. Provision C.8.d.v (4)(c) requires additional follow-up SSID projects for pollutants without Water Quality Objectives when the analytical results exceed Probable Effects Concentrations or Threshold Effects Concentrations (TECs).

Action desired: *Remove triggering by TECs.*

"For pollutants without WQOs, results exceed Probable Effects Concentrations. ~~or Threshold Effects Concentrations from MacDonald 2000.15~~"

C.8.e.ii.(1) Stressor/Source Identification (SSID) Projects - CCWP #43 - DCB

Comment 1. This provision requires Permittees who conduct SSIDs through a regional collaborative to conduct a "minimum of one for toxicity" out of eight possible new SSID projects during the permit term. However, this provision fails to account for the possibility that there may not be any toxicity threshold exceedances. The list of threshold exceedances provided in Provision C.8.e.i may or may not include any toxicity exceedances, and the current provision C.8.e.ii.(1) needs to account for that possibility.

Action desired: *Include qualifying language to the provision which accounts for the possibility of no qualifying toxicity exceedances.*

(1) Permittees who conduct SSID projects through a regional collaborative shall collectively initiate a minimum of eight new SSID projects (minimum of one for toxicity, provided that at least one qualifying toxicity threshold exceedance appears on the list required by Provision C.8.d.i) during the Permit term.

C.8.e.ii.(2) Stressor/Source Identification (SSID) Projects- CCWP #44 - DCB

Comment 1. This provision requires specific Permittees who conduct SSIDs to conduct a "minimum of one for toxicity" new SSID projects during the permit term. However, this provision fails to account for the possibility that there may not be any toxicity threshold exceedances. The list of threshold exceedances provided in Provision C.8.e.i may or may not include any toxicity exceedances, and the current provision C.8.e.ii (1) needs to account for that possibility.

Action desired: *Include qualifying language to the provision which accounts for the possibility of no qualifying toxicity exceedances for the countywide programs.*

"(2) If conducted through a stormwater countywide program, the Santa Clara and Alameda Permittees each shall be required to initiate no more than five (minimum of one for toxicity, provided that at least one qualifying toxicity threshold exceedance appears for the subject county on the list required by Provision C.8.d.i) SSID projects; the Contra Costa and San Mateo Permittees each shall be required to initiate no more than three SSID (one for toxicity, provided that at least one qualifying toxicity threshold exceedance appears for the subject county on the list required by Provision C.8.d.i) projects; and the Fairfield-Suisun and Vallejo Permittees each shall be required to initiate no more than one SSID project(s) during the Permit term."

C.8.e.iii.(1). Stressor/Source Identification (SSID) Projects -CCWP #45 - DCB

Comment 1. This provision requires SSID projects to be initiated by the third year of the permit term, resulting in the selection of an SSID project based on only 1-2 years of data generated under the new permit. Project selection necessarily requires more substantive data generation than only during the first year of the permit term. Thus, the requirement for this provision should be extended to begin initiation of SSID projects by the fourth year of the permit term, to allow for consideration and incorporation of 3 years of data generated by the MRP.

Action desired: *Change requirement to generate SSID projects in the third year to instead begin in the fourth year.*

(1) Step 1: The Permittees shall develop a work plan for each SSID project and submit the work plans with the Urban Creeks Monitoring Report (UCMR) such that a minimum of half the required number of SSID projects are started (at a minimum, have a workplan) by the ~~third~~ fourth year of the permit term.

C.8.e.iii.(1).f Stressor/Source Identification (SSID) Projects- CCWP #46 - DCB

Comment 1. The requirements of this provision require the Permittees to conduct a TIE in the event that a monitoring sample exhibits toxicity with no identifiable chemical pollutant. However, this provision is overly restrictive and inflexible. By forcing the Permittee to

immediately conduct a TIE, this provision does not allow for the Permittee to explore alternative methods of reducing toxicity prior to conducting a TIE, and overly constrains the study design.

Action desired: *Allow greater flexibility for Permittees conducting SSIDs by restoring the option granted in the MRP 1.0 which allows Permittees to conduct a TRE first. See additional language below.*

"Conduct a site specific study (or non-site specific if the problem is wide-spread) in a stepwise process to identify and isolate the cause(s) of the trigger stressor/source. This study should follow guidance for Toxicity Reduction Evaluations (TRE) or Toxicity Identification Evaluations (TIE). A TRE, as adapted for urban stormwater data, allows Permittees to use other sources of information (such as industrial facility stormwater monitoring reports) in attempting to determine the trigger cause, potentially eliminating the need for a TIE.

For toxicity studies where there is no chemical pollutant associated with the creek status monitoring sample exhibiting toxicity, a Toxicity Identification Evaluation (TIE)[18] should be conducted. Where chemical data indicate a pollutant, such as fipronil or a pyrethroid, is present at adverse effects levels in the sample location, it is not necessary to conduct a TIE, and the SSID project would be considered complete."

C.8.e.iii.(2) Stressor/Source Identification (SSID) Projects- CCWP #47 - DCB

Comment 1. The requirements of this provision are presented without clarity, and the specific intent and meaning of the requirement to complete half of the SSID projects by the end of the permit term is vague. This provision should make clear that Provision C.8.e.iii.(2) refers to the completion of Step 1, the SSID investigation, and does not include the follow-up steps (Step 3(a) per Provision C.8.iii.(3)(a)).

Action desired: *Improve the language and clarity of the provision by making the changes below.*

(2) Step 2: The Permittees shall conduct SSID investigations according to the schedule in each SSID project work plan and shall report on the status of SSID investigations annually in the UCMR. SSID projects are intended to be oriented toward taking action(s) to alleviate stressors and reduce sources of pollutants; thus the Permittees shall attempt to complete ~~all steps~~ Step 1 for half their required SSID projects, at a minimum, during the permit term. Local stormwater Permittees shall be advised of the SSID project and consulted regarding possible local sources and potential management actions during the work plan phase and periodically throughout the SSID project.

C.8.e.iii.(3).b. Stressor/Source Identification (SSID) Projects -CCWP #48 - DCB

Comment 1. This provision requires that a Permittee seek the approval of an Executive Officer in order to complete a stressor ID project where the Permittee has determined that the MS4 is not the source. This provision is unnecessary and creates unnecessary steps.

Action desired: *Remove the requirement for Executive Officer approval.*

(b) If a Permittee(s) determines that discharges from its (their) stormwater collection system(s) are not contributing to an exceedance of a water quality standard, the Permittee(s) may end the SSID project. ~~The Executive Officer must concur in writing before an SSID project is determined to be completed.~~

C.8.e.iv Stressor/Source Identification Projects, Reporting -CCWP #49 - DCB

Comment 1. The requirements of this provision are not specific enough. The provision needs to clarify and make a distinction that the annual SSID reports required by this section are status reports on efforts to date.

Action desired: Introduce clarifying language which specifies SSID annual status reports.

> **Reporting:** The Permittees shall submit an SSID status report in each UCMR which summarizes the actions taken in C.8.e.i-iii above. The SSID status report shall include a running summary of all SSID projects (C.8.e.ii), including start date, brief problem definition, and schedule for each project. As projects progress, the SSID status report shall describe findings and monitoring results and outline steps for the upcoming year for each ongoing project. The Permittees shall submit the SSID status report with each UCMR.

C.8.f Pollutants of Concern (POC) Monitoring- CCWP #50 - DCB

Comment 1. The number of samples required in Table 8.4 for Contra Costa and Santa Mateo Counties should be consistent with the tiered sample number requirements in the Creek Status Monitoring (C.8.d).

Action desired: Reduce the minimum number of samples for Contra Costa and Santa Mateo Counties, consistent with C.8.d.

Table 8.4 POC Monitoring Parameters, Effort and Type

Pollutant of Concern	**Total Samples[a] Collected /Analyzed (yearly minimum) for each Countywide Program: Alameda & Santa Clara / Contra Costa~~, Santa Clara, and~~& San Mateo**	**Minimum Number of Samples for each Monitoring Type[b]**
Polychlorinated Biphenyls (PCBs)	80 (8)	8 samples minimum for monitoring types 1-5
Total Mercury	80 (8)	8 samples minimum for monitoring types 1-5
Copper	20 / 10 (2)	4 samples minimum for monitoring types 4-5
Pesticides: Pyrethroids (water and sediment): bifenthrin, cyfluthrin, cypermethrin, deltamethrin, esfenvalerate, lambda-cyhalothrin, permethrin Imidacloprid Indoxacarb Fipronil Carbaryl (in sediments)	20 / 10 (2) for each	4 samples minimum for monitoring types 4-5
Toxicity: Water Column (during storms) Sediment (wet season, not necessarily during storms)	10 / 5 (1) for each	~~20~~ 10 samples for monitoring type 4
Emerging Contaminants[c]:		

Must include but not limited to: Perfluorooctane Sulfonates (PFOS, in sediment) Perfluoroalkyl sulfonates (PFAS, in sediment) Alternative flame retardants	See footnote c	See footnote c
Ancillary Parameters[d]: Total organic carbon Suspended sediments (SSC) Hardness	as necessary to address management questions for other POCs – see footnote d	
Nutrients: Ammonium, Nitrate, Nitrite, Total Kjeldahl Nitrogen, Orthophosphate, Total Phosphorus (all nutrients collected together for each sample)	20 / 10 (2) for each nutrient species	20 samples for monitoring type 4 for each nutrient species.

C.8.f Pollutants of Concern (POC) Monitoring- CCWP #51 - DCB

Comment 2. An error in Table 8.4 states that the minimum yearly sample should be 20 for toxicity. This minimum number should be reduced to 10 samples in order to coincide with the total number of samples required.

Action desired: Reduce the minimum number of samples from 20 to 10.

Table 8.4 POC Monitoring Parameters, Effort and Type

Pollutant of Concern	Total Samples Collected / Analyzed (yearly minimum) for each Countywide Program: Alameda, Contra Costa, Santa Clara, and San Mateo.	Minimum Number of Samples for each Monitoring Type
Toxicity: Water Column (during storms) Sediment (wet season not necessarily during storms)	10 (1) for each	~~20~~ 10 samples for monitoring type 4

C.8.f Pollutants of Concern (POC) Monitoring- CCWP #52 - DCB

Comment 3. An error in Table 8.5 POC Analytes and Analytical Methods identifies Method 1668 for PCBs. This method is not appropriate for use with the sediment fraction for analysis. Table 8.5 should include greater flexibility in methods that are approved for sample media to allow Permittees to select appropriate and cost effective methods.

Action desired: Remove PCBs Method 1668 from the table OR add alternative methods to the table to increase flexibility.

C.8.g.iii.(2) Urban Creek Monitoring Report- CCWP #53 - DCB

Comment 1. The requirements of this provision are not specific enough. The provision needs to clarify that the annual SSID report required by this section is a status report.

Action desired: *Introduce clarifying language which specifies that SSID annual reports are status reports on work completed to date.*

"(2) A SSID status report pursuant to Provision C.8.e.iv."

C.8.g.iv Pollutants of Concern Monitoring Reports- CCWP #54 - DCB

Comment 1. This provision requires the POC Monitoring report to be due annually on October 15, only fifteen days after the end of the preceding Water Year, and one month after the Annual Report is due. This deadline is overly restrictive, as it reduces the potential for sampling during the last three months of the Water Year (July-September) and adds unnecessary, incongruent reporting as it is also asked for annually in the UCMR (C.8.g.iii.) on March 15 with other monitoring data. Streamlining report and data submittal requirements is a cost and staff resources savings for the Permittees.

Action desired: *Consolidate the timelines of all monitoring report's electronic data reporting. Remove the duplicative POC reporting and allow this monitoring to be reported with the UCMR.*

"iv. Pollutants of Concern Monitoring Reports – ~~By October 15 of each year of the permit (~~Beginning in 2016~~)~~, the Permittees shall submit a report describing the allocation of sampling effort for POC monitoring for the forthcoming year and what was accomplished for POC monitoring during the preceding ~~w~~Water ~~y~~Year. The report ~~may~~shall be integrated into the UCMR (C.8.g.iii). The report shall include (for preceding year and projected for forthcoming year): monitoring locations, number and types of samples collected, purpose of sampling (management question addressed), and analytes measured. ~~Any data not reportable to CEDEN should also be included in this report."~~

C.9.c Implementation of IPM- CCWP #55 - DCB

Comment 1. This provision inappropriately requires the Permittees to observe the application of pesticides by the contractor in order to verify that the contractor is implementing the Permittee's IPM contract specifications or its IPM policies, program, or ordinance; and adhering to the associated standard operating procedures. This requirement assumes that observing pesticide application is somehow indicative of compliance with IPM practices and/or SOPs, which it is not. Furthermore, some Permittees that oversee contracts for IPM services are not qualified to judge whether contractors are applying pesticides properly, and pesticide applications are only a small part IPM contract specifications The most important criteria for the Permittees to do in regard to requiring Contractors to implement IPM are:

a. Have a contract that clearly specifies the requirements related to IPM
b. Be familiar with the contract and its requirements
c. Monitor the work of the contractor through frequent communication. The contractor should report verbally or otherwise with the Permittee on this pest management activities and the rationale behind those practices.

Action desired: Remove requirement to observe pesticide applications. Require instead that Permittees monitor their pest services contract. This monitoring would include reviewing pesticide usage, locations of any applications, and tracking IPM practices.

C.10.a.i.a Schedule- CCWP #56 - DCB

Comment 1. Trash reductions become increasingly more challenging with higher percentage reduction goals. Furthermore, the trash reduction approach and accounting methodology for measuring trash reductions has changed significantly during MRP 1.0 requiring a major redirection of Permittee efforts resulting in lost time and opportunities. Six months after the submittal of the Municipal Short Term Trash Load Reduction Plans and BASMAA's Trash Load Reduction Tracking Methodology on February 1, 2012, Regional Water Board staff rejected Permittees plans and BASMAA's tracking methodology. On August 15, 2012, in a meeting between BASMAA representatives and Regional Water Board Executive Officer, a tentative agreement was reached to work together on a revised methodology. For the remainder of FY 2012/13, Regional Water Board staff and Permittee representatives worked collaboratively on a major new shift in direction for trash load reduction on how trash reduction should be accounted for, and how to proceed toward the objective of "no visual impact". This significant redirection of approach and effort resulted in lost time and opportunities. In FY 2013-2014, Permittees continued to build upon the newly agreed framework in development and implementation of their Long-Term Trash Load Reduction Plans and in demonstrating the 40% reduction in trash loads by July 1, 2014 as required by the MRP. This framework is still evolving, and Permittees continue to explore and build on their knowledge of the effectiveness of control measures, the frequency these measures should be implemented, and how best to demonstrate or assess progress in meeting trash load reduction requirements. These efforts take time and significant resources. The proposed 70% reduction by July 1, 2017 must be extended to provide sufficient time for Permittees to ramp-up their new and refined trash load reduction programs. Meeting the higher percentage reduction goals will result in significant increases in capital as well as operating and maintenance costs for which municipalities have not yet identified funding. It should be noted that during MRP 1.0, Permittees received $5 million dollars in grant funding for the purchase of full trash capture devices. These grant funds played a significant role in helping Permittees efforts to meet the 40% trash load reduction goal. The proposed extensions are consistent with the State's Trash Amendments.

Action desired: Extend 70% load reduction time schedule to the end of the permit term.

i. **Schedule -** Permittees shall reduce trash discharges from 2009 levels, described below, to receiving waters in accordance with the following schedule:

a. 70 percent by November 30, 2020~~by July 1, 2017~~; and

b. 100 percent or no adverse impact to receiving waters from trash by July 1, 2025~~2022~~.

C.10.a.ii.a Trash Generation Area Management- CCWP #57 - DCB

Comment 1. This provision includes a sentence stating that full trash capture devices only allow trash to be discharged during a large storm event. This language is problematic as a "large storm event" has not been defined.

Action desired: Revise language as below:

"Actions equivalent to full trash capture means actions that send no more trash down the storm drain system than a full trash capture device would allow~~, which is essentially no trash discharge except in very large storm flows~~."

C.10.a.ii.b Trash Generation Area Management- CCWP #58 - DCB

Comment 1. This provision includes requirements to ensure that private lands plumbed directly to the MS4 are equipped with full trash capture devices or managed to a low trash generation rate, and requires mapping of those lands greater than 5,000 square feet by 2018. However, municipalities do not have an accurate inventory of storm drains on private lands nor do they know how these drains are connected to their MS4. It would also be a huge undertaking to identify storm drains on these lands, determine their point of connection to the MS4, and map their drainage areas. Additionally, there is no distinction between residential and commercial/industrial properties though trash on these lands is being addressed through C.4 and C.5 programs. Permittees do not have the capacity to perform the proposed requirement, but can and will address trash issues on these properties through the C.4 programs.

Action desired: Remove C.10.a.ii.b and instead integrate inspections and enforcement of high priority private drainage areas into C.4 programs.

~~"b. Permittees shall ensure that lands that they do not own or operate but that are plumbed directly to their storm drain systems in Very High, High, and Moderate trash generation areas are equipped with full trash capture systems or are managed with trash discharge control actions equivalent to or better than full trash capture systems. The efficacy of the latter shall be assessed with visual assessments in accordance with C.10.b.ii. If there is a full trash capture device downstream of these lands, no other trash control is required. Permittees shall map all such lands greater than 5000 ft2 that are plumbed directly to their storm drain systems by 2018, including the trash control status of these areas. This information shall be retained by the Permittees for inspection upon request.~~"

C.10.a.iii Mandatory Minimum Full Trash Capture Systems- CCWP #59 - DCB

Comment 1. This provision requires C.3 facility overflow structures be equipped with a screen. However, having a screen on C.3 facility overflow may result in increased flooding potential resulting in increased risk to property and public safety. Regional Water Board staff has not produced any data or information, which we have requested, that indicates C.3 facilities are not appropriately sized to treat the peak flow resulting from a one-year one hour storm (i.e., the required design treatment capacity for full trash capture device). A technical review of this matter was conducted by engineering staff within the City of Martinez. This review indicated the C.3 facility treats a greater volume of water than produced by the peak flow resulting from a one year-one hour storm.

Action desired: *Revise text as noted below.*

"A stormwater treatment facility implemented in accordance with Provision C.3 is also deemed a full capture systems if the system is maintained to prevent off site movement of accumulated trash and overflow from the system is ~~appropriately~~ screened, if needed, to meet the full trash capture screening specification for storm flows up to the full trash capture hydraulic specification (C.10.a.iii)."

C.10.b.1.a Maintenance- CCWP #60 - DCB

Comment 1. Maintenance of a full trash capture device should be based on device type, drainage area, and characteristics of the land it drains (amount of trash, amount of vegetation, etc.).

Action desired: *Revise text to require that devices are inspected at a minimum of once a year. Frequency of inspection will be based on device type, drainage area, and characteristics of the land it drains.*

"a. Maintenance - The maintenance of each full capture device shall be adequate to prevent plugging, flooding, or a full condition of the device's trash reservoir and bypassing of trash. Storm drain inlet type full trash capture devices shall be maintained a minimum of once per year. A Permittee-specific maintenance program shall be implemented and adapted to achieve/maintain full capture criteria.

~~(i) Storm drain inlet type full trash capture devices in Low or Moderate trash generation areas shall be maintained a minimum of once per year.~~

~~(ii) Storm drain inlet type full trash capture devices in High trash generation areas shall be maintained a minimum of twice per year.~~

~~*(iii)* Storm drain inlet type full trash capture devices in Very High trash generation areas will be maintained a minimum of 3 times per year.~~

~~*(iv)* All other full trash capture devices shall be maintained a minimum of one time per year.~~

~~If any such device is found plugged or full of trash during a maintenance event, the maintenance frequency shall be increased so that the device is neither plugged nor full of trash by the next maintenance event."~~

C.10.b.i.c / C.10.f.iii. Certification- CCWP #61 - DCB

Comment 1. These provisions required certification that devices are being operated and maintained to meet full trash capture system requirements. (See related Comment #2 under "Multiple".) Numerous factors beyond the control of Permittees may result in a device being found plugged or clogged even though the device is being maintained on a frequency found to be appropriate. CCCWP requests the language be modified to require Permittees to annually report that they have an operation and maintenance program designed to meet the full trash capture system requirements, and are implementing that program.

Action desired: *Require Permittees to report annually that an operation and maintenance program is in place, and it is designed to meet full trash system capture requirements.*

C.10.b.ii.v Visual Assessment of Outcomes of Other Trash Management Actions - CCWP #62 - DCB

Comment 1. Currently there is no means that will allow Permittees to take any percent reduction credit for significant efforts that have not conclusively demonstrated a trash generation rate change within a reporting period or the permit period. There should be an acknowledgement of the trial and error nature of implementing trash reduction control measures and the uncertainty in the degree of effectiveness they might achieve within a given timeframe. Permittees should be given greater flexibility and incentive for trying different control measures, at different frequencies, and in different locations. Without this flexibility, Permittees may be compelled to move directly to the installation of full trash capture devices everywhere simply to ensure they meet percent reduction requirements, which may not be the most cost effective method and long-term solution.

For example, source control strategies are very complex, expensive, time-consuming, and difficult to develop and implement, but may provide the most effective, long-term and sustainable solution to addressing a persistent and pervasive litter problem (e.g., single use plastic bags). The current permit language provides no incentive for source control approaches as the maximum achievable reduction credit is fixed at a maximum of 5%. This maximum is less than what was allowed in MRP 1.0 for single use plastic bag bans.

Another example includes the efforts to develop and implement grass-roots community-based approaches and/or partnerships with the local business community to address a trash problem also takes substantial effort and time to ramp-up. The results of these efforts are uncertain at the time of development and may not be known or achieved within a reporting period or several reporting periods; however, given sufficient time for their implementation they may be effective and additionally can have substantial ancillary benefits by increasing awareness of the trash problems within a community.

Another example scenario is a Permittee deciding to increase street sweeping from monthly to twice a month, which may require approval from upper management or elected officials, identification of new or additional funding, a contract amendment, and/or adjustments to other street sweeping routes and frequencies, etc. To plan, implement, and assess this effort could take a year or more, and the increased street sweeping may or may not result in the desired reduction in the trash generation rate even though the control measure has reduced measurable amounts trash. If the action is ultimately not achieving the needed result, then the Permittee must decide what additional or different trash reduction strategies should be taken. This trial and error process takes time and the results are uncertain. CCCWP requests more flexibility and greater incentives for identifying the best and most cost effective combination of trash load reduction strategies within a reporting period and over the term of the permit.

Action desired: *Include language in permit that provides development of a proposed interim or temporary credit for significant actions that may result or significantly contribute in time to a generation rate change.*

> "C.10.b.ii.v. Permittees may put forth substantial effort to reduce trash loads in certain areas which may not be immediately apparent when performing the visual assessments. Permittees shall be allowed to put forth evidence of these efforts or programs, as well as supporting documentation on an allowable interim

percent reduction credit for these actions, pending project completion and demonstration of achievement of the reduction in the trash load generation rate."

C.10.b.iv Source Control- CCWP #63 - DCB

Comment 1. The Long-Term Trash Load Reduction Plans developed under MRP 1.0 included source control as a means to meet percent reduction milestones. However, the percentages allowed in the draft MRP 2.0 (up to 5% for all source control actions) are not consistent with previously acceptable percentages for source control. One of the reasons cited for limiting the percent reduction is the suggested "double accounting" of these control measures. The argument has been put forth that reduction in trash loads from implementing product bans should be apparent in the results of visual assessments, and to provide an additional reduction credit for simply establishing a product banned constitutes a double credit. This is argument is flawed for a variety of reasons. First, the ranges assigned to high and very high trash generation rates are considerable. It is quite possible that the results of visual assessments would fail to detect the reduction to the extent of achieving an actual generation rate change. That is, a TMA with very high trash generation rate may continue to be very high even though it is now on the lower end of the range of that rate as a result of the product ban.

Furthermore, source control programs undoubtedly provide benefits beyond the boundaries of a trash management area and even a Permittee's jurisdiction, as these litter items are often obtained in one location and discarded in entirely different geographic location. Additionally, Regional Board staff's arguments also fail to recognize that not all trash is created equal. Certain litter items are more persistent and problematic than others, especially in a marine environment. Single use plastic bags and polystyrene food containers are a more significant threat to aquatic resources then say napkins and paper cups, which break-down and decompose more readily in the environment.

Without sufficient incentives for source control, there will be little incentive for Permittees to tackle other persistent and problematic litter-prone items such as cigarette butts, plastic bottles, metallic balloons, non-paper-based food wrappers, plastic cup lids and straws, etc….

Based on the previously acceptable percentages, CCCWP Permittees have committed resources to the development or advancement of source control programs as a means to meeting their trash load reduction milestones. Many communities implemented product bans to address particularly persistent and problematic sources of litter found in waterways. These efforts were not without significant risk from legal challenges and concerns from members of their communities. To reduce a previously established trash load reduction credit for these significant efforts is bad public policy. Source control is perhaps the most cost effective and sustainable strategy for eliminating persistent and problematic sources of trash and other pollutants. Strong incentives for source control strategies and efforts should be incorporated into MRP 2.0.

Action desired: Edit section C.10.b.iv language increasing the maximum credit to 25%. Permittees will still be responsible for providing evidence to support the percentages claimed.

"C.10.b.iv Source Control – Permittee jurisdiction-wide actions to reduce trash at the source, particularly persistent and problematic trash items, may be valued toward trash load reduction compliance by up to twenty-five percent load reduction total for all such actions. To claim a load percentage reduction value, Permittees must provide substantial evidence that these actions reduce trash by the claimed value. A Permittee may reference studies in other jurisdictions if it provides evidence that the implementation of source control in its jurisdiction is similarly implemented as the source control assessed in the reference studies."

C.10.b.v / C.10.f.vi Receiving Water Observations- CCWP #64 - DCB

Comment 1. As currently drafted, the receiving water observations for trash will not address the management questions being asked. Since there is no established protocol, there may not be consistency in how the observations are conducted across the region. The intent of receiving water monitoring downstream of areas converted to low generation remains unclear. The requirement that locations of sites have to be downstream of areas converted to low generation implies that compliance with MS4 reductions will be determined in the future via receiving water monitoring. It is not possible to definitely determine the source of all trash in receiving waters (upstream, windblown, direct dumping) and therefore these observations cannot and should not be linked to compliance with trash load reductions.

Action desired: Recommend having Permittees develop a monitoring protocol for receiving water observations within some specified time period of permit adoption. Suggest redrafting of text as follows:

"i. Receiving Water Observations - Permittees shall conduct 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.

a. The observations shall be sufficient to evaluate the level of trash present in receiving waters over time, and to the extent possible determine 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).~~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)~~."

C.10.e.i Additional Creek and Shoreline Cleanup- CCWP #65 - DCB

Comment 1. For additional Creek and Shoreline Cleanups, the formula has a 10:1 offset, which means that most Permittees will not be able to claim even a 1% percent, or the maximum 5%, allowable reduction from these efforts, even though these activities remove significant amounts of trash from local creeks. While we are glad to see that some percent reduction for these efforts is included, the formula for calculating the reduction should be revised to have 3:1 offset and the maximum allowable percent reduction should be increased. Additionally, this provision is limiting in that creek cleanups must be conducted twice a year to claim the minimal percent reduction. Some areas may not require that frequency of cleanups and some volunteer efforts are not necessarily twice a year at the same stretch of creek. If Permittees may not

account for appropriate load reduction from these efforts, it is possible that much of the funding for these extremely effective cleanups will be reduced or eliminated. These events have significant public education, citizen involvement, and community awareness benefits. The removal of trash from creeks and shorelines improves water quality in the creeks, the San Francisco Bay and Delta, and the Pacific Ocean. With an increased maximum credit of 10% and a reduced 3:1 ratio, these important and beneficial efforts will certainly not be done at the expense of upland actions need to achieve the 70% reduction milestone; however, the proposed changes will provide a sufficient incentive for continued local efforts to remove trash that finds its way into our creeks and onto our shorelines. This is a win-win for water quality, the Regional Water Board, friends of creeks organizations, the environment and municipalities.

Action desired: Increase the maximum percent reduction credit to 10% or more for additional creek and shoreline cleanups, remove minimum cleanup frequency at a site, and reduce the 10:1 ratio to 3:1.

"A Permittee may claim a load reduction offset of one percent for each total of trash volume removed from additional cleanups that is ~~ten~~ three percent of the Permittee's 2009 trash load volume estimates, based on its trash generation maps and average categorical trash generation rates (see C.10.a.ii), in accordance with the following formula:

1~~0~~% Reduction Offset (Volume) = $(12\ A_{VH(2009)} + 4\ A_{H(2009)} + A_{M(2009)})\ OF$

where:

$A_{VH(2009)}$ = total amount of 2009 very high trash generation category jurisdictional area

$A_{H(2009)}$ = total amount of 2009 high trash generation category jurisdictional area

$A_{M(2009)}$ = total amount of 2009 moderate trash generation category jurisdictional area

12 = Very High to Moderate weighing ratio

4 = High to Moderate weighing ratio

OF = offset factor equal to (7.5 x 0.03), where 7.5 is the conversion from acres to gallons based on trash generation rates and 0.03~~1~~ is the ~~ten~~ three to one offset ratio."

C.10.e.ii Direct Trash Discharge Controls - CCWP #66 - DCB

Comment 1.The maximum of 10% offset for direct trash discharge controls in too small for such an important action. As the formula is written, even the trash challenged communities may find it difficult to claim meaningful reductions. In certain communities, a significant, pervasive and problematic source of trash observed in receiving waters may predominantly come from direct discharges (i.e., illegal dumping and homeless encampments) and these communities should be allowed to focus their efforts to address those sources and receive full credit for these actions. On May 13, 2015, the Regional Water Board adopted a resolution stating in part:

NOW, THEREFORE BE IT RESOLVED THAT the Water Board:

1. *Encourages local agencies to undertake efforts to eliminate and prevent adverse water quality impacts from homeless encampments. These efforts should include clear and measurable goals for trash reduction.*

It isn't enough for Water Board members to "encourage" these programs and then approve a Permit that provides very little credit toward compliance.

Action desired: Omit the maximum percent reduction value for direct discharge control programs, and reduce the ratio in the percent reduction formula to 3:1.

"Direct Trash Discharge Controls – A Permittee may offset an additional part of its provision C.10.a trash load percent reduction requirement by implementing a comprehensive plan approved by the Executive Officer for control of direct discharges of trash to receiving waters from non-storm drain system sources. ~~The maximum offset that may be claimed is ten percent using the C.10.e.i formula.~~"

C.10.f.i Reporting- CCWP #67 - DCB

Comment 1. This Provision requires mapping the areal extent of all control measures. However, it is very challenging to map areal extent of some control measures (e.g., trash receptacles, enhanced litter enforcement, enhanced storm drain inlet maintenance, activities to reduce trash from uncovered loads, anti-littering and illegal dumping enforcement, improved trash bins/container management, etc…). These maps would be extremely difficult to read as many trash reduction actions can be employed within a trash management area. This additional mapping effort is a "less beneficial task" and will not contribute in any meaningful way to assisting Permittees with meeting their trash load reduction goals, or to Water Board staff in evaluating compliance.

Action desired: Recommend continuing of mapping generation rates, management areas, and drainage of capture devices, but not the areal extent of all control measures.

C.10.f.ii Reporting- CCWP #68 - DCB

Comment 1. This Provision requires the Permittees to provide an updated trash generation map each reporting period. Considerable resources are required to generate, review, and revise maps. Having a map submitted each year does not provide that much more data than what is otherwise presented in the Annual Reports.

Action desired: Recommend tying map submittal to 70% reduction compliance date.

C.11 and C.12 General Comments- CCWP #69 - DCB

Comments are provided below on Provisions C.11 (Mercury Controls) and C.12 (PCBs Controls). Please note that Provisions C.11.a–d in the Tentative Order is "piggybacked" on C.12.a–d, so comments on Provisions C.12.a-d also generally apply to C.11.a-d.

It appears that the level of effort and resources required to implement Provisions C.11 and C.12 will be dramatically higher than implementing MRP 1.0 Provisions C.11 and C.12. Much of the cost of implementing MRP 1.0 Provisions C.11 and C.12 was offset by a grant from USEPA that

will end in 2016. The availability of grant or other funding for implementing MRP 2.0 Provisions C.11 and C.12 is uncertain.

With the delay in the release of the Draft Tentative Order from February to May 2015, many of the required submittal and/or completion deadlines have not been appropriately extended, and as currently written would be extremely difficult, if not infeasible, to meet. For example, see provisions: C.11.a.iii.(1) due February 2016; C.11.a.iii.(2) due with the June 2016 Annual Report; C.12.a.iii.(1) due February 1, 2016; C.12.a.iii.(2) due with the 2016 Annual Report; and, C.12.a.ii.(4) due April 2016.

Action desired: *Extend the deadlines for these reports to the 2017 Annual Report and work with the Permittees to establish more realistic time frames for submittal of reports and/or completion of certain significant tasks, including the Green Infrastructure Framework in Provision C.3.j.i.(1).*

C.12 Introduction- CCWP #70 - DCB

Comment 1. For better clarity, the introductory language should state the existing load (14.4 kg/yr.) and the wasteload allocation (1.6 kg/yr) in the PCBs TMDL that are applicable to the MRP Permittees, as opposed to the existing load and wasteload allocation that apply to all urban and non-urban stormwater discharges to the Bay (20 kg/yr and 2 kg/yr, respectively).

Action desired: *Edit the introduction to Provision C.12 to identify the existing load and wasteload allocation that apply only to the MRP Permittees*.

C.12.a Implement Control Measures to Achieve PCBs Load Reductions- CCWP #71 - DCB

Comment 1. This permit provision requires the Permittees to demonstrate a total cumulative MRP area-wide PCBs load reduction of 3 kg/yr over the permit term. Provision C.12 does not provide Permittees with a clear and feasible pathway to attaining compliance with this load reduction performance standard. In order for Provision C.12 to provide Permittees with a clear and feasible pathway to attaining compliance, the load reduction performance criteria should be informed by and consistent with the final and agreed upon interim accounting method (see comments below on Provision C.12.b). Compliance should be based upon implementing PCBs control programs designed to achieve the load reduction performance criteria, as many factors that would be key to achieving the proposed load reduction performance criteria within this permit term are not controllable by the Permittees (such as the rate of building demolition or the amount of redevelopment that will occur within old industrial areas).

Furthermore, PCBs load reduction performance metrics should be in the form of action levels. Regional Water Board staff has acknowledged that load reduction performance metrics are not effluent limits. Further clarity is needed regarding their legal definition and implications with regard to enforcement and potential third party lawsuits. In addition, the permit should include contingency language that would allow for achieving compliance if a good-faith demonstration of solid efforts and actions by Permittees consistent with permit requirements does not result in achievement of the load reduction performance criteria.

Action desired:

- *Base compliance on implementation of control programs designed to achieve the load reduction performance criteria using the interim accounting method and restate the load reduction performance criteria in the form of Action Levels.*
- *Include contingency language in Provision C.12.a that allows compliance based on a good-faith demonstration of actions and effort consistent with these control programs, such as:*

  "If the PCBs load reduction performance criteria are not achieved, the Permittees shall demonstrate reasonable and demonstrable progress toward achieving the criteria."

C.12.a.ii Control Measures to Achieve PCBs Load Reductions - CCWP #72 - DCB

Comment 1. This provision requires Permittees to submit Permittee-specific PCBs load fractions by April 2016. This requirement would increase the number of stand-alone reports due within the first six months of permit adoption, creating significant burden on the Permittees.

Action desired: Include the submittal of PCBs load fractions with the FY 2016 Annual Report, providing an additional six months for the development of Permittee-specific PCBs load fractions.

C.12.a.ii (4) Implementation Level- CCWP #73 - DCB

Comment 1. The interim PCBs load reduction compliance performance criteria (i.e., 500 g/yr during the first two years of the permit) should be omitted. Although Permittees will continue existing efforts to develop and implement additional PCBs and mercury control programs, it will take time for new control programs to ramp up. Preliminary calculations of the benefit of reasonable control program scenarios over the first two years of the permit term reveals that meeting the year 1 and year 2 load reduction criteria are not feasible. Thus, the inclusion of these performance criteria in the permit will likely cause the Permittees to be out of compliance at the end of year 2.

Additionally, the PCBs load reduction performance criteria presented in Table 12.1 are somewhat unclear as presented. Presumably, the proposed area-wide load reduction performance criteria to be achieved by the end of the permit term is 3 kg/yr (as opposed to 10 kg/yr if one assumed that 0.5 kg/yr would be required in each of the first two years and 3 kg/yr would be required in each of the subsequent three years). Note that the Permit Fact Sheet states that the load reductions should be achieved "each year" (Fact Sheet, page A-98). This should be clarified by stating that 0.5 kg/yr is required at the end of year 2 (although preferably this interim performance criterion should be removed) and that 3 kg/yr be achieved by the end of year 5.

Action desired: Remove the PCBs load reduction performance criteria for the first two years of the permit term from this provision. For example, edit Provision C.12.a.ii.(4) as follows:

"For all Permittees combined, these county-specific average annual PCBs load reduction performance criteria shall total ~~0.5 kg/yr during each of the first two years of the permit and~~ 3.0 kg/yr ~~during each of~~ by the final ~~three~~ year~~s~~ of the permit. The ~~0.5 kg/yr reduction (and county-specific portions thereof) shall be assessed for compliance at the end of year 2 and shall be computed as the average of the year 1 and year 2 load reduction. Similarly, the~~ 3.0 kg/yr reduction (and county-specific portions thereof) shall be computed as the average of years 3-5 and shall be assessed for compliance at the end of year 4…"

C.12.a.iii (1) Reporting- CCWP #74 - DCB

Comment 1. This provision requires the Permittees to report a list of the watersheds (or portions therein) where PCBs control measures are currently being implemented and those in which control measures will be implemented (C.12.a.ii(1)) during the term of this permit as well as the monitoring data and other information used to select these watersheds by *February 1, 2016*. This submittal timeframe is arbitrary and unnecessarily short. It is unclear as to why this information is needed prior to the related information required in Provision C.12.a.iii.(2).

Action desired: Consolidate submittal of monitoring data with the monitoring reports submitted per Provision C.8.g.iv Pollutants of Concern Monitoring Reports.

C.12.a.iii (2)(b) Reporting- CCWP #75 - DCB

Comment 1. This provision requires the Permittees to report the identity and description of the contaminated sites referred to the Regional Water Board during the permit term in the 2016 Annual Report, although this is the first annual report of the permit term.

Action desired: Replace "during the permit term" with "during the previous year of the permit term" as this information will be updated each year per Provision C.12.a.iii.(3).

C.12.b Assess PCBs Load Reductions from Stormwater- CCWP #76 - DCB

Comment 1. Provision C.12.b requires Permittees to submit a load reduction assessment methodology by April 1, 2016 for Executive Officer approval. BASMAA and Regional Water Board staff recently worked together to develop an "interim accounting method" that was intended to provide a basis for stipulated load reduction benefits for implementation of the primary PCBs control programs during the MRP 2.0 permit term. CCCWP appreciates that Regional Water Board staff included in the Permit Fact Sheet much of the information developed for the interim accounting method. However, values for certain accounting parameters for managing PCBs-containing materials and wastes during building demolition activities were left out. The values for these, and all other accounting parameters, should be scrutinized now as part of the public permit review process, given the uncertainty of these values. This is especially important for one key parameter, the fraction of PCBs mass in a building that enters the MS4 during demolition in the absence of enhanced controls. In general, it is essential to articulate all aspects of the interim accounting method for managing PCBs-containing materials and wastes during building demolition activities in the permit because complying with the load reduction performance criteria in C.12.a would require the Permittees

to rely heavily on this PCBs control program. In addition, many elevated source areas are outside of MRP MS4 jurisdiction (e.g., Caltrans, railroads, electrical utility properties and equipment, and ports). The interim accounting method should recognize that addressing these sites and sources will result in load reductions that should count towards meeting the load reduction performance criteria.

Action desired: Omit this provision. Finalize the interim accounting method and incorporated it into the Permit Fact Sheet. The final interim accounting method would then be used for annual reporting of load reductions starting with the 2016 Annual Report, with potential refinements to the methodology being submitted starting in 2018. Include in the Permit Fact Sheet a discussion all of the parameters and assumptions underlying the interim accounting method and the associated uncertainties. The Permittees are committed to working with Regional Water Board staff to finalize the interim accounting method over the next few months.

C.12.c Plan and Implement Green Infrastructure to Reduce PCBs Loads- CCWP #77 - DCB

Comment 1. Although the Permit Fact Sheet states that this permit does not require implementation of specific control measures for PCBs load reductions, this provision specifically requires the implementation of GI measures to achieve a 120 g/yr PCBs load reduction over the final three years of the permit and 3 kg/yr by the year 2040.

This provision should not include performance metrics for PCBs load reductions through implementation of Green Infrastructure (GI) over the MRP 2.0 permit term. PCBs load reductions will not be the driver for GI implementation during MRP 2.0. Regional Water Board staff has noted that based on extrapolation of MRP 1.0 data, the proposed metrics should be met via redevelopment in old industrial areas. Thus the proposed metrics would not influence GI implementation during MRP 2.0 and meeting them would instead be dependent upon an activity that is not under Permittee's control. While we expect to learn valuable lessons via opportunistic early implementation of GI retrofit projects through Provision C.3.j.ii., the pollutant load reductions associated with these retrofits implemented over MRP 2.0 is anticipated to be relatively small.

Action desired: This provision should be omitted.

C.12.f Manage PCBs-Containing Materials and Wastes During Building Demolition Activities- CCWP #78 - DCB

Comment 1. Provision C.12.f requires development of a program to manage PCBs in building materials and wastes during demolition. Given the large standing stock of PCBs known to be present in certain buildings in the Bay Area, there may potentially be significant benefits to implementing the proposed control program. However, data are sparse regarding the amount of PCBs-containing materials that are released to the ground during demolition and then mobilized into the MS4 by urban runoff, making it challenging to project with any certainty the

actual benefit of the proposed control program. Cost-effectiveness relative to other PCBs controls is also highly uncertain at this time.

There remains a number of very challenging issues related to managing PCBs in building materials and wastes during demolition. For instance, this Provision fails to acknowledge that Permittees have no control over the timing of when properties redevelop. As was stated in the IMR Part B submitted in March 2014, BASMAA believes the various facets of the "big picture" need to be addressed together (e.g., human exposure at the site, water quality, and disposal) rather than trying to apply water quality BMPs outside of this context. The best approach would be to work with the State, USEPA, the building industry, and other stakeholders to develop a comprehensive statewide program analogous to current programs for asbestos and lead-based paint. The three year timeframe for developing such a statewide program and implementing its procedures at the Permittee level is likely unrealistic. Defining EPA's role in any such program is particularly important. Implementing a program at the local level would likely be highly inefficient.

> *Action desired: Allow the Permittees to work with the State, USEPA, the building industry, and other stakeholders to develop a comprehensive statewide program analogous to current programs for asbestos and lead paint; remove the requirement to develop this program at the municipal level. Development of the statewide program to control PCBs during building demolitions, rather than applying controls to a specified number of buildings demolished, should represent compliance with this requirement.*

C.12 Permit Fact Sheet- CCWP #79 - DCB

Comment 1. Given the uncertainty and variability in the inputs and outputs of the simple modeling used in the current TMDL framework, there is currently little certainty that feasible human interventions to reduce urban runoff PCBs inputs could accelerate the Bay's recovery with respect to PCBs. The TMDL needs to be updated to better reflect: 1) the questionable feasibility of meeting the urban runoff allocation; and, 2) the uncertainties in the allocation related to a number of factors (e.g., food web and pollutant fate modeling, fish consumption rate and target species, dose-response).

The Permit Fact Sheet should state that the Regional Monitoring Program (RMP) PCBs Synthesis Report established a foundation for a more realistic framework for conceptual and quantitative modeling of PCBs fate in the Bay that includes greater focus on the Bay margins. As such, the Permit Fact Sheet should state that the regulated community, Regional Water Board staff and the scientific community (e.g., RMP) should continue to work together to develop as soon as possible: 1) appropriate tools and monitoring strategies in support of this modeling approach to inform future planning of how and where to focus efforts to reduce PCBs loads in urban runoff; and, 2) a clear plan and timeframe for updating the Bay PCBs TMDL.

The Permit Fact Sheet states, on page A-94, that "based on information gained during pilot testing" that the specified load reduction performance criteria are achievable. In fact, the information gained through the Clean Watersheds for a Clean Bay pilot projects summarized in

Part B of the Integrated Monitoring Report shows that the performance criteria included in C.12.a. is not likely to be achieved this permit term.

Action Desired: Revise Permit Fact Sheet to reflect the current state of scientific knowledge based on the RMP PCBs Synthesis Report and work to date on PCBs sources and control strategies. Revise the sentence on page A-94 above, or identify the uncertainties associated with achieving the performance criteria.

C.12 Permit Fact Sheet- CCWP #80 - DCB

Comment 2. The Permit Fact Sheet includes an incomplete method to achieve stipulated reduction credits for each building demolished with PCBs controls, for each redeveloped site with new bioretention facilities, and for finding and abating concentrated sources of PCBs. Looking for hidden PCB sources is a good idea, but Permittees cannot guarantee that they will find them and be able to abate them.

Action Desired. Develop a program that will serve as a basis for the credits for the accounting for compliance. The program needs to include methods to systematically identify and review potential sources, and to refer them to appropriate agencies for abatement.

C.12 Permit Fact Sheet- CCWP #81 - DCB

Comment 3. The Permit Fact Sheet references many values from the Sources, Pathways, and Loadings Multi-Year Synthesis Report (McKee and Yee, 2015). As this is currently a draft report, the Permit Fact Sheet should be revised to reflect final edits to the report.

Action Desired: Revise the Permit Fact Sheet to reflect final edits to the report.

C.15 Exempted and Conditionally Exempted Discharges- CCWP #82 - DCB

Comment 1. The objective of this provision is to exempt unpolluted non-stormwater discharges from Discharge Prohibition A.1 and to conditionally exempt non-stormwater discharges that are potential sources of pollutants. However, fire department hydrant testing, and small new construction water line cleaning are not included as exempt uses. These minor potable water discharges are not conducted by potable water suppliers.

Action desired: Include fire department hydrant testing, and small new construction water line cleaning as conditionally exempted discharges, as long as BMPs are in place to reduce chlorine.

C.17 Annual Reports - CCWP #83 - DCB

Comment 1. Annual Reports under MRP 1.0 are due by September 15 of each year and report on the activities that occurred in the preceding fiscal year. This same reporting cycle is proposed for MRP 2.0. The Tentative Order anticipates an effective date for MRP 2.0 of December 1, 2015. Having a permit effective date in the middle of a permit year and fiscal year

is challenging for several reasons. It is a challenge because municipal budgets are on a fiscal year cycle. When permits become effective in the middle of the budget cycle, Permittees' budgets are set for the remainder of the fiscal year. Municipalities are not able to adequately anticipate and budget for permit mandates that fall within the first year of the newly issued permit. For this reason, Permittees have been requesting for the past two years that the effective date of the reissued MRP coincide with the fiscal year. It is also a challenge because with the September 15, 2016 Annual Report, Permittees must report on the preceding fiscal year, which in this case covers two separate permits and sets of permit requirements – the last six months under MRP 1.0 and the first six months under MRP 2.0. This creates confusion and an unnecessary administrative burden on the 76 Permittees under the MRP and Regional Board staff because the Permittees must develop and submit a **one-time** annual report format for the approval of the Executive Officer by the required April 1 deadline. Water Board staff must review and approve that format in a timely manner so that Permittees can begin the 3-4 month process for development and submittal of their annual reports. For the last several years, the review and approval by Regional Board staff has extended into July, which squeezes the time BASMAA, the Stormwater Programs and Permittees have to prepare their many reports. A permit effective date that straddles two permit terms also presents logical challenges for conducting and reporting on our monitoring programs. Should the Water Board insist on a permit effective date that does not coincide with the fiscal year, as repeatedly requested by Permittees, Water Board staff must simplify and streamline the reporting during this overlap period.

Action Desired: Make the permit effective date July 1, 2016, or waive the requirement for the initial Annual Report under MRP 2.0. The September 2016 report should be the final report for MRP 1.0 and any special submittals due under MRP 2.0. The first Annual Report for MRP 2.0 due September 15, 2017 would cover an 18 month period for program elements.

Some of the compliance deadlines in the first twelve months after the MRP 2.0 effective date

Permit Section	Implementation Task	Implementation Level/Reporting	Schedule
C.3 - New Development and Redevelopment			
C.3.a	New Development and Redevelopment Performance Standard Implementation	Provide a brief summary of the method(s) of implementation of Provisions C.3.a.i (1)–(8) in the 2016 Annual Report.	2016 AR
C.3.b	Regulated Projects	All elements of Provision C.3.b.i.-ii shall be fully implemented immediately, including a database or equivalent tabular format that contains all the information listed under Reporting (Provision C.3.b.iv.)	implement immediately
C.3.c	Low Impact Development (LID)	For specific tasks listed that are reported using the reporting tables required for Provision C.3.b.iv, a reference to those tables will suffice.	2016 AR
C.3.d	Numeric Sizing Criteria for Stormwater Treatment Systems	Permittees shall use the reporting tables required in Provision C.3.b.iv.	2016 AR
C.3.g	Hydromodification Management	All HM Projects shall meet the HM Standard in Provision C.3.g.ii immediately. For Contra Costa Permittees, Projects receiving final planning entitlements on or before one year after the Permit effective date may be allowed to use the Contra Costa design standards from the Previous Permit.	immediate compliance
		Contra Costa Permittees shall, with the first Annual Report following the Permit's effective date, submit a technical report consisting of an HM Management Plan describing how Contra Costa will implement the Permit's HM requirements (e.g., how it will update or modify its practices to meet Permit requirements).	2016 AR
C.3.h	Operation and Maintenance of Stormwater Treatment Systems	Immediate implementation except for Provision C.3.h.ii (7) which is due within 12 months of the Permit effective date.	immediate compliance
		Each Permittee shall certify in the 2017 Annual Report that an ERP has been completed by 12 months after the Permit effective date.	12/1/2016
C.3.j	i. Green Infrastructure Program Plan Development	Prepare a framework for development of Green Infrastructure Plan. Each Permittee shall submit documentation that its framework for development of its GI Plan was approved by its governing body, mayor, city manager, or county manager by 12 months after Permit effective date, with the 2017 Annual Report.	12/1/2016
C.5 - Illicit Discharge Detection and Elimination			
C.5.c	Spill and Dumping Complaint Response Program	The Permittee's website shall be updated with the central contact point to report spills and dumping by June 30, 2016.	6/30/16

Permit Section	Implementation Task	Implementation Level/Reporting	Schedule
C.5.e	Control of Mobile Sources	In the 2016 Annual Report, each Permittee shall provide the following: (a) minimum standards and BMPs for each of the various types of mobile businesses; (b) its enforcement strategy; (c) a list and summary of the specific outreach events and education conducted to the different types of mobile businesses operating within the Permittee's jurisdiction; (d) the number of inspections conducted at mobile cleaners' businesses and/or job sites in 2015-2016; (e) discuss enforcement actions taken against mobile businesses in 2015-2016; (f) a list of mobile cleaners operating within the Permittee's jurisdiction; and (g) a list and summary of the county-wide or regional activities conducted, including sharing of mobile business inventories, BMP requirements, enforcement action information, and education.	2016 AR
C.5.f	Municipal Separate Storm Sewer System (MS4) Map	In the 2016 and 2019 Annual Reports, Permittees shall discuss how they make MS4 maps available to the public and how they publicize the availability of the MS4 maps.	2016 AR
C.6 - Construction Site Control			
C.6.e	Inspections	By September 1st of each year, each Permittee shall remind all site developers and/or owners disturbing one acre or more of soil to prepare for the upcoming wet season.	9/1/16
		In the 2016 Annual Report, each Permittee shall certify the criteria it uses to determine hillside developments. If the Permittee is using maps of hillside developments areas or other written criteria, include a copy in the Annual Report.	2016 AR
C.7 - Public Information and Outreach			
C.7.d	Stormwater Pollution Prevention Education	In the 2016 Annual Report, each Permittee shall list the point of contact, discuss how this point of contact and stormwater pollution website are publicized and maintained, and certify that it has a website dedicated to providing and maintaining information on stormwater issues, watershed characteristics, and stormwater pollution prevention alternatives.	2016 AR
C.8 - Water Quality Monitoring			
C.8.e	Stressor/Source Identification (SSID) Projects	The Permittees shall develop a work plan for each SSID project and submit the work plans with the Urban Creeks Monitoring Report (UCMR) such that a minimum of half the required number of SSID projects are started (at a minimum, have a workplan) by the third year of the permit term.	3/15/16
		When a Permittee(s) determines that discharges to its stormwater collection system(s) contribute to an exceedance of a water quality standard or an exceedance of a trigger threshold such that the water body's beneficial uses are not supported, the Permittee(s) shall submit a report in the UCMR that describes BMPs that are currently being implemented, and the current level of implementation, and additional BMPs that will be implemented, and/or an increased level of implementation, to prevent or reduce the discharge of pollutants that are causing or contributing to the exceedance of WQSs. The report shall include an implementation schedule.	3/15/16
		The Permittees shall submit an SSID report in each UCMR which summarizes the actions taken in C.8.e.i-iii above. The SSID report shall include a running summary of all SSID projects (C.8.e.ii), including start date, brief problem definition, and schedule for each project. As projects progress, the SSID report shall describe findings and monitoring results and outline steps for the upcoming year for each ongoing project. The Permittees shall submit the SSID report with each UCMR.	3/15/16

Permit Section	Implementation Task	Implementation Level/Reporting	Schedule
C.8.g	ii. Electronic Reporting	The Permittees shall submit to the California Environmental Data Exchange Network (CEDEN) all results from monitoring conducted pursuant to Provisions C.8.d. Creek Status, C.8.e. SSID Projects (as applicable), and C.8.f. Pollutants of Concern. Data that CEDEN cannot accept are exempt from this requirement. Data shall be submitted in SWAMP formats and with the quality controls required by CEDEN. Data collected during the previous October 1–September 30 period shall be submitted by March 15 of each year.	3/15/16
	iii. Urban Creeks Monitoring Report	The Permittees shall submit a comprehensive Creek Status Monitoring Report no later than March 15 of each year, reporting on all data collected during the foregoing October 1–September 30 period. (See C.8.g.iii for specifics)	3/15/16
	iv. Pollutants of Concern Monitoring Reports	By October 15 of each year of the permit (beginning in 2016), the Permittees shall submit a report describing the allocation of sampling effort for POC monitoring for the forthcoming year and what was accomplished for POC monitoring during the preceding Water Year. The report shall include (for preceding year and projected for forthcoming year): monitoring locations, number and types of samples collected, purpose of sampling (management question addressed), and analytes measured. Any data not reportable to CEDEN should also be included in this report.	10/15/16
C.10 - Trash Load Reduction			
C.10.a	i. Schedule	Permittees shall reduce trash discharges from 2009 levels, described below, to receiving waters in accordance with the following schedule:	
		60% by 7/1/16 (performance guideline)	7/1/16
	ii. Trash Generation Area Management	Permittees shall have an opportunity to correct and/or revise, based on improved information, the 2009 trash levels and trash generation areas in their February 2014 maps by submitting the correction and/or revision no later than the 2016 Annual Report deadline.	2016 AR
C.10.e	ii. Direct Trash Discharge Controls	A Permittee may offset an additional part of its provision C.10.a trash load percent reduction requirement by implementing a comprehensive plan approved by the Executive Officer for control of direct discharges of trash to receiving waters from non-storm drain system sources. The maximum offset that may be claimed is ten percent using the C.10.e.i formula. The plan shall be submitted with the 2016 Annual Report.	2016 AR
C.10.f	i. Summary and Areal Extent of Implementation	A summary of trash control actions within each trash management area, including the types of actions, levels of implementation, areal extent of implementation, and whether the actions are ongoing or new, including initiation date.	2016 AR
C.10.f	Ii Submittal of Updated Maps	An updated trash generation area map or maps and associated trash management areas including the locations and associated drainage areas of full trash capture systems and non-full trash capture system trash control actions, and the location of Trash Hot Spots, with highlight or other indication of any revisions or changes from the previous year map(s). These maps are separate and distinct from corrections and/or revisions of the 2009 trash levels in the February 2014 maps and shall illustrate progress toward achieving the trash reduction requirements in C.10.a.i.	2016 AR
C.11 - Mercury Control			
C.11.a	Implement Control Measures to Achieve Mercury Load	The Permittees shall report by February 1, 2016, a list of the watersheds (or portions therein) where mercury control measures are currently being implemented and those in which control measures will be implemented (C.11.a.ii(1)) during the term of this permit as well as the monitoring data and other information used to select these watersheds.	2/1/16

Permit Section	Implementation Task	Implementation Level/Reporting	Schedule
	Reductions.	The Permittees shall report in their 2016 Annual Report the specific control measures (C.11.a.ii(2)) that are currently being implemented and those that will be implemented in watersheds identified under C.11.a.iii(1) and an implementation schedule (C.11.a.ii(3)) for these control measures. (See C.11.a.iii (2) for report specifics).	2016 AR
C.11.b	Assess Mercury Load Reductions from Stormwater	The Permittees shall submit, for Executive Officer approval, by April 1, 2016, a full description of an adequate measurement and estimation methodology and rationale for the approaches used to assess mercury load reductions achieved through mercury source control, stormwater treatment, green infrastructure projects, and other stormwater management measures implemented during the term of this permit.	4/1/16
C.12 - Polychlorinated Biphenyls (PCBs) Controls			
C.12.a	Implement Control Measures to Achieve PCBs Load Reductions	Report list of the watersheds (or portions therein) where PCBs control measures are currently being implemented and those in which control measures will be implemented during the term of this permit as well as the monitoring data and other information used to select these watersheds.	2/1/16
		Report specific control measures that are currently being implemented and those that will be implemented in identified watersheds and an implementation schedule.	2016 AR
C.12.b	Assess PCBs Load Reductions from Stormwater	Submit, for Executive Officer approval, by, a full description of the measurement and estimation methodology and rationale for the approaches used to assess PCBs load reductions achieved through PCBs source control, stormwater treatment, green infrastructure projects, and other stormwater management measures implemented during the term of this permit.	4/1/16
C.12.g	Fate and Transport Study of PCBs: Urban Runoff Impact on San Francisco Bay Margins	Submit a workplan in 2016. Report on status of the studies in the 2017 Annual Report. Report in the 2019 IMR the findings and results of the studies completed, planned, or in progress as well as implications of studies on potential control measures to be investigated, piloted or implemented in future permit cycles.	2016 AR
C.13 - Copper Controls			
C.13.a	Manage Waste Generated from Cleaning and Treating of Copper Architectural Features…	In the 2016 Annual Report, the Permittees shall certify that legal authority currently exists to prohibit the discharge of wastewater to storm drains generated from the installation, cleaning, treating, and washing of copper architectural features, including copper roofs. In the 2016 Annual Report, the Permittees shall report how copper architectural features are addressed through the issuance of building permits.	2016 AR
C.13.b	Manage Discharges from Pools, Spas, and Fountains that Contain Copper-Based Chemicals.	In the 2016 Annual Report, the Permittees shall certify that legal authority currently exists to prohibit the discharges to storm drains of water containing copper-based chemicals from pools, spas, and fountains. In the 2016 Annual Report, the Permittees shall report how copper-containing discharges from pools, spas, and fountains are addressed to accomplish the prohibition of the discharge.	2016 AR
C.17 - Annual Reports			

Permit Section	Implementation Task	Implementation Level/Reporting	Schedule
C.17	Annual Reports	The Permittees shall submit Annual Reports electronically in all cases and in paper copy upon request by September 15 of each year. Each Annual Report shall report on the previous fiscal year beginning July 1 and ending June 30. The annual reporting requirements are set forth in Provisions C.1 – C.16.	9/15/16
		The Permittees shall collaboratively develop a common annual reporting format for acceptance by the Executive Officer by April 1, 2016.	4/1/16

CITY OF CLAYTO
Founded 1857 . . . Incorporated 1964

COMMUNITY DEVELOPMENT (925) 673-7340
ENGINEERING (925) 363-7433

6000 HERITAGE TRAIL (P. CLAYTON) CALIFORNIA 94517-1250
TELEPHONE (925) 673-7300 FAX (925) 672-4917

City Council
DAVID T. SHUEY, *MAYOR*
HOWARD GELLER, *VICE MAYOR*
JIM DIAZ
KEITH HAYDON
JULIE K. PIERCE

July 10, 2015

Via Email to: mrp.reissuance@waterboards.ca.gov

Bruce Wolfe, Executive Officer
California Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay Street
Oakland, CA 94612

Subject: Opposition to the Tentative Order Reissuing the Municipal Regional Stormwater Permit (MRP 2.0) and Comments for modifications

Dear Mr. Wolfe and Members of the Board:

Thank you for the opportunity to comment on the Tentative Order Reissuing the Municipal Regional Stormwater Permit (MRP 2.0.) The City of Clayton continues to support the Water Board's vision of reducing stormwater pollution and protecting our local creeks, the Delta, and San Francisco Bay.

General – Clayton #1 – STL

For the past two years, representatives from Contra Costa municipalities, along with a consortium of Bay Area agencies and BASMAA, have been engaged in an ongoing dialogue with your staff regarding: 1. experience gained and lessons learned from the current MRP; 2. how to apply that experience toward maximizing the effectiveness of MRP 2.0; and 3. ensuring the requirements contained in MRP 2.0 provide a clear path to compliance.

This conversation generated many new ideas and approaches that build upon experience gained and identify how to expand upon and enhance our stormwater pollution prevention efforts. It also advocated consolidating or eliminating "less beneficial tasks" in the Permit, extending implementation dates, reducing reporting, and adjusting ongoing tasks to minimize effort while maintaining effectiveness in protecting water quality.

This approach acknowledges the reality that new or additional funding sources required to implement the new and expanded requirements contained in MRP 2.0 have yet to be identified; and, advocates allocating limited resources in ways that would focus upon, and maximize effectiveness of the major new and expanded mandates.

Despite this extensive effort, few of these ideas were carried forward into MRP 2.0. Such a disappointment of democracy! Therefore, the City of Clayton must oppose MRP 2.0 as it is currently drafted. We request your Board consider our following comments and then direct Water Board staff to work with permittees to revise the Tentative Order.

General – Clayton #2 – STL

A. Major New and Expanded Mandates Should Be Offset by Eliminating Less Beneficial Tasks

There are numerous new elements in the proposed MRP 2.0 that will require additional staff resources and local funds. The City of Clayton does not have additional staffing or funds; rather, it is projected by FY 2016/17 we will no longer have sufficient stormwater funds to complete all the current tasks, let alone the new items. Therefore, we ask the MRP 2.0 be adjusted so there is a focus and priority on the most important tasks and items that provide the best outcomes for the limited availability of local staff and funds.

The attached table summarizes adjustments that have been presented to the Water Board staff that would improve program efficiencies or eliminate certain less beneficial tasks. Comprehensive information and rationale has been presented to support these requests to Water Board staff in various meetings and correspondence from BASMA and the Contra Costa Clean Water Program. Inclusion of these changes in the MRP 2.0 will allow permittees to focus and apply our limited resources to the major new and expanded mandates, in order to achieve the greatest positive impact.

Please have your staff review the attached Table and work with permittee representatives to make most or all of the recommended adjustments to "less beneficial tasks."

C.3. and C.12. – Clayton #3 – STL

B. General Comments

Additional efforts are needed by most all cities to continue to implement the Trash Reduction requirements. These efforts have just commenced and going forward will undoubtedly consume more staff resources and funds. In addition to the ramp-up of the Trash Reduction implementation, two (2) new requirements will push the need for more staffing and funds: Green Infrastructure, and PCB Reduction. The City of Clayton asks for prioritization, as suggested below. There is not an ability to achieve all

the proposed requirements in the time frames identified with the lack of new funds or staffing.

- See the attached Table for comments on the recommended adjustments to "less beneficial tasks." **(Note from Selina. Table comments will be labeled separately.)**

- The Green Infrastructure and PCB plans need to be moved in their start and implementation to later time periods so that cities can continue to focus on the Trash Reduction implementation.

General – All Reports Should Be Submitted with Annual Reports – Clayton #4 – STL

- Various reports/studies submittals should be filed with the Annual Report submittal, not at separate times.

General – Web Based Annual Reports – Clayton #5 – STL

- A Water Board hosted web based (cloud) annual report format and upload would allow for efficiencies in submittal and review, entering the digital age similar to other state agency departments that require annual report submittals by cities.

General – Reporting – Clayton #6 – STL

- We appreciate that the special project reports are done annually as part of the Annual Report submittal and not separate. This streamlined approach should be used for the other various report submittals that are currently identified in the MRP 2.0 proposed language to occur at different times.

The City of Clayton has further concerns regarding the Green Infrastructure Requirement, PCB Reduction Plan and Trash Management Plan for private property and the Annual Report format process itself. Below are expanded comments and suggestions:

C.3. – Clayton #7 – STL

C. **Green Infrastructure**

The draft Tentative Order includes a new unfunded mandate to develop Green Infrastructure Plans. This coordinated, multi-year effort represents a significant paradigm shift toward developing comprehensive long range plans that purportedly will significantly reduce the amounts of urban runoff pollutants, including the pollutants of concern, flowing into receiving waters. MRP 2.0 requires permittees develop a framework for the development of one's Green Infrastructure Plan and have it approved by its governing body, mayor, city manager, or county manager within twelve (12) months. This timeline is unrealistic in regards to actual local governmental time frames and related budget processes which include notices and public meetings, etc.

C.3. – Clayton #8 – STL

The creation of both a framework and plan will also require the City of Clayton to contract with outside engineering services, since we contract for this public service and do not have in-house credentialed staff to undertake such efforts, nor even the funds to hire such!

C.3. – Clayton #9 – STL

Additionally, the proposed MRP 2.0 assumes that current infrastructure will need replacing in the future. The City of Clayton's curbs, gutters and sidewalks are already set at ultimate location and no widening is planned in the future -- the public rights-of-ways are fully built out.

C.3. – Clayton #10 – STL

Further, with routine maintenance curbs, gutters and sidewalks easily last 100 years. Most all of Clayton's sidewalks and curbs were installed in the 1980s and therefore are expected to last another 75 years or more.

C.3. – Clayton #11 – STL

Please note there are many sidewalks in the Bay Area that were installed in the 1920s and remain in fine shape. Consequently, the proposed plan suggests a city rip out perfectly good infrastructure, often paid by taxpayers, before the end of its useful life!

C.3. – Clayton #12 – STL

Plus, in Clayton there is insufficient infrastructure improvement projects planned in the MRP 2.0 cycle that would replace such infrastructure in the future.

C.3. – Clayton #13 – STL

The City of Clayton strongly urges the following suggestions for the MRP 2.0 Green Infrastructure:

- The Green Infrastructure Section needs to be modified to include an exception to account for cities that will not have any widening of streets or replacement of curbs, gutters, sidewalks.

C.3. – Clayton #14 – STL

- The time frame for submitting a Green Infrastructure framework needs to be altered for submittal with the Annual Report filing in September 2018, and the Green Infrastructure Plan filed with the Annual Report in September 2019.

C.12. – Clayton #15 – STL

D. <u>PCB Management Plan</u>

The draft Tentative Order proposes that permittees plan and implement a program to

manage PCB-containing materials in non-wood frame commercial and industrial structures constructed or remodeled between 1950 and 1980 at the time those structures are demolished.

The City of Clayton does not have any such buildings; however the Permit language indicates the countywide PCB amounts could be allocated per capita if there is not mutual agreement on another allocation method. This prospect offers no safe harbor compliance by the City of Clayton should a countywide allocation mutual agreement be unattained. The default provision in the MRP 2.0 (Section 12.a.11.4) permit would mandate an allocation of PCB to Clayton and Clayton must then prepare a reduction plan for materials/structures that under the language of the proposed permit do not exist in the City?

C.12. – Clayton #16 – STL

The need to address PCB should be handled as the Bay Area Air Quality Management District Board (Air Board) has done with asbestos and lead. State regulations or the Air District require certain permits of any proposed demolition to ensure the materials are being properly disposed. The applicant provides the estimated amount of materials to be removed and how and where to be removed. The Air District collects fees for their permits to cover review and staff time, etc. The issued permits are then submitted to the local building permitting authority as part of the application to demolish. Local building departments are not equipped to identify and monitor such aspects of PCB. Furthermore, many city data bases do not exist before the 1970s; prior period information must be culled through research of old paper or microfiche records, field research, and/or interviews with staff or community and construction contractors. The time frame stipulated in the proposed Permit provides only four (4) months to create such a plan? This is not a reasonably adequate time frame for achievement.

C.12. – Clayton #17 – STL

- Develop a PCB permit process at the Water Board or State level that would be similar to the Air Board process for quantification and abatement of PCB for demolition of structures.

C.12. – Clayton #18 – STL

- Eliminate the per capita allocation default mechanism for PCB Reduction for individual permittees that would otherwise not have any structures subject to PCB language on C12. There should be exception path for compliance for individual permittees that would not individually be subject to a PCB Reduction plan if there is no agreeable countywide mutual allocation method. (Provide a "safe harbor" from per capita allocation for those permittees that do not have structures subject to the PCB proposed regulation)

C.12. – Clayton #19 – STL

- Modify the time frame for PCB Reduction Plan related to demolitions to be submitted no sooner than with the Annual Report in September 2019.

C.10. – Clayton #20 – STL

E. Trash Management Plan

Much effort and focus by permittees centered on Trash Reduction Plans and locals have just recently started more implementation. In City of Clayton, we have only had 18 months experience with our 25 full capture devices and it has been a drought since they were installed. We have found that it costs about $200 per device to clean and document maintenance in-house, including using a digital camera to record findings, upload to a server system, and place field coordinate onto maps (this is with Clayton's use of one two-person crew and one truck). An outside contractor provided an estimate to perform this same work for us, at a cost of $900-$1,000 per device.

At this time Clayton is trying to sustain this work in-house, however, due to other pressing workload items and staff reductions [surprise! Clayton cannot afford a maintenance crew solely dedicated to stormwater tasks within current funds], we may need to hire an outside contractor, at further expense without additional funds! Since actual rainy weather experiences have not really occurred due to the extended drought, we are concerned the proposed Permit gives preference to such devices in the future when its true operational and maintenance costs are yet to be fully understood by cities. The Permit language needs to have greater flexibility allowing for alternative measures that are also not onerous in reporting requirements which divert staff time from working on other important Permit requirements.

C.10. – Clayton 21 – STL

The Permit language proposes mandated mapping of drainage on private property that drains into or connects into city storm drains (Section C.lO.a.ii.b). Most cities have older sections and even newer areas where we do not have such mapping, maps may be on varying forms of microfiche, or even non-existent. There are no comprehensive digital drainage maps for private and public connections. If the intent is to ensure that private property generators of high or moderate trash are managing its trash, then the Permit needs to allow the cities to ensure the property is tnanaging its trash through sweeping, clean ups and/or other devices such as trash capture. As written, the Permit requires local staff to attempt mapping by use of dye tests and contract with specialized survey companies in cases where such maps do not exist. This proposition is a very time consuming and expensive process. The language needs to be modified to achieve the goal of ensuring that real properties which connect to or drain into stormwater infrastructure have appropriate trash reduction techniques in use.

C.10. – Clayton #22 – STL

The Permit as written is also unclear as to Section C.lO (f) vi., wherein it discusses the need for receiving-water observations. It does not provide clarity on how many and where receiving-water observations are done. Is it the intent to be at each outfall even if there are full trash capture devices installed up pipe?

C.10. – Clayton #23 – STL

The Permit language also suggests a need to inspect the upland areas of a full trash capture device to ensure the base line has not worsened. Our understanding is that a full trash capture device would take litter upland in the drainage area from any color to a green color, thus the need for ongoing upland visual assessment and monitoring is not needed.

C.10. – Clayton #24 – STL

- Require private real property owners in high-trash and moderate-trash areas to install full trash capture devices or implement equivalent measures.

C.10. – Clayton #25 – STL

- Clarify where and how frequent are the receiving-water observations, i.e. so many outfalls prior to the rainy season? And submit information with the annual report.

C.10. – Clayton #26 – STL

- Eliminate need for upland drainage area visual assessment for those drainage areas that have installed full trash capture devices. The only annual report information should be on the devices and target only devices that were not found to be properly functioning.

C.12. – Clayton #27 – STL

F. <u>Permittees Must Have a Clear Path to Compliance</u>

Considerable time and effort has been expended discussing how to reduce levels of pollutants of concern flowing into our waterways, particularly PCBs. Failure to achieve the reductions specified in MRP 2.0 could result in our particular City being held in noncompliance. However, as drafted, MRP 2.0 provides no clear path for permittees to avoid noncompliance. Some examples include:

- The draft Tentative Order mandates achieving specified reductions in the total quantity of PCBs discharged from municipal storm drains. A major means of achieving these reductions is through removal of PCBs during building demolitions. However this Order fails to acknowledge that permittees have no control over the timing of when real properties redevelop.

  ..... *We ask that development of a program to control PCBs during building dentolitions*

should represent compliance with this require;nent, rather than applying controls to a specified number of buildings demolished.

C.12. – Clayton #28 – STL

Also, request a path for compliance for those cities (permittees) that do not have structures subject to the Permit requirements.

C.12. – Clayton #29 – STL

- The Tentative Order includes (in the Fact Sheet) an incomplete method to achieve stipulated reduction credits for each building demolished with PCB controls, for each redeveloped site with new bio-retention facilities, and for finding and abating concentrated sources of PCBs. Looking for hidden PCB sources is a good idea, but permittees cannot guarantee it will find them and be able to abate them.

  ..... *We ask that development of a program to systematically identify and review potential sources, and refer then1 to appropriate agencies for abatement, become the basis for credit toward compliance.*

C.12. – Clayton #30 – STL

- The draft Tentative Order allows only four (4) months after Permit adoption for permittees to submit a more complete "measurement and estimation methodology and rationale" for stipulating PCB reduction credits.

  ..... *We ask that BASMAA's PCBs progrants accounting methodology be finalized, incorporated into the Perntit, and then used to calculate PCBs load reductions during permittee annual reporting.*

C.12. – Clayton #31 – STL

- Water Board staff has stated the threat of noncompliance is intended to strongly encourage permittees to find and abate hidden PCBs, and that Water Board staff would use "enforcement discretion" if and when permittees are unable to meet the mandated PCB load reductions. From a municipal government perspective, new financial and staffing commitments must be based on mutually-agreeable goals and objectives, and have well-defined metrics for measuring progress.

  ..... *We ask that the load reduction performance criteria not be the point of contpliance, and that Water Board staff work with permittee representatives to revise the Draft Tentative Order so that it provides a clear and feasible pathway for permittees to attain compliance. Most factors that are key to meeting the load reduction performance criteria are uncertain and ntany are not within permittee control (e.g., extent of source properties that will be found, building demolition rates, and redevelopment rates), making achievement of compliance uncertain.*

Summary

From a broader public policy comparative viewpoint, consider it was envisioned that all

public agencies shall operate no vehicle or equipment ever older than three (3) years to minimize and reduce pollutant emissions into the air for cleaner air quality, and to maximize fuel efficiencies for reduced greenhouse gas emissions. The reality of this utopian public policy is taxpayer-funded tolerance and payment of local tax revenues and fees to accon1plish these objectives are inherently incongruent. Consequently, locally elected public officials are unable to provide such a marvelous public fleet of the latest and greatest vehicles and equipment for the cleanest of air. It would also be a terrible waste of taxpayers' resources to attrition a fleet every 3 years.

Our consideration of the unfunded clean water mandates contained in proposed MRP 2.0 is not dissimilar.

The City of Clayton appreciates the efforts by Water Board staff to develop Permit requirements that are implementable and effective in improving surface water quality- a goal which we share. But just as a household must live within its means, so must cities in the collective pursuit of cleaner water. We look forward to resolution of the remaining issues and the implementation of a reasonable MRP 2.0.

Sincerely,

David T. Shuey,
Mayor

Attachment- Table

Requested Adjustments to Improve Efficiency in the Municipal Regional Permit, Including Elimination of "Less Beneficial Tasks"

Labeling	Provision	Task or Requirement	Requested Adjustments
C.2.f. – Clayton #32 – STL	C.2.f.	Corporation Yard inspection requirements.	Eliminate this requirement, as it duplicates the requirements for inspections already included in the Storrnwater Pollution Prevention Plans (SWPPPs) for these same facilities.
C.3.b.i. – Clayton #33 – STL	C.3.b.i.	Eliminates grandfathering of Regulated Projects with vested tentative maps approved prior to advent of C.3 requirements	Allow municipalities flexibility to require ! hese applicants to implemen stormwater treatment requirements only to the extent not in conflict with state law and existing development agreements
C.3.b.ii.(4) – Clayton #34 –	C.3.b.ii.(4)	Certain Roads Projects are Regulated Projects under Provision C.3	Delete this requirement as the intent is superseded by the Green Infrastructure requirements in Provision C.3.j.
C.3.b.ii.(1)(c). – Clayton #35 – STL	C.3.b.ii.(1)(c)	Requires projects where 50% or more of existing impervious area is redeveloped to provide treatment for entire area.	Delete this requirement as the intent is superseded by the Green Infrastructure requirements in Provision C.3.j.
C.3.e.ii. – Clayton #36 – STL	C.3.e.ii.	Special Projects-allowance to use non-LID treatment on smart growth development projects that meet specified location and gross density criteria.	To avoid a disincentive for including pedestrian amenities, allow publi plazas to be omitted from calculation of project gross density.
C.3.e.ii. – Clayton #37 – STL	C.3.e.v.(1)	Requires Permittees to track Special Projects that have been identified (application submitted) but not approved.	Delete this requirement, as the number of projects, and amount of impervious area, has proven to be small.
C.3.e.v.(2) – Clayton #38 – STL	C.3.e.v.(2)	Requires Permittees to conduct and document an analysis of the feasibility of LID treatment for Special Projects.	Delete this requirement, as it creates considerable additional effort fo applicants and Permittees without any expected water-quality benefit.
C.3.g.vii. – Clayton #39 – STL	C.3.g.vii.	Requires Contra Costa municipalities (through CCCWP) to submit a technical report describing how Contra Costa will implement current Permit hydromodification management requirements.	Delete requirement to submit a technical report. CCCWP submitted a 2013 report on the results of a multi-yeatr monitoring study that concluded current policies and criteria meet these requirements.
C.3.g.iv. – Clayton #40 – STL	C.3.g.iv.	Allows Permittees to propose a different method for sizing hydromodification management facilities that is not biased against Low Impact Development, but requires a Permit amendment before using the method.	Delete requirement for a Permit amendment before the method is used. Note: the Fact Sheet accompanying the Tentative Order states that Water Board Executive Officer approval would be required, not a Permit amendment.
C.3.h.ii.(6)(b)-(c) – Clayton #41 – STL	C.3.h.ii.(6)(b)	Requires Permittees to inspect 20% of Regulated	Delete the annual requirement to allow fexibility in scheduling

	Provision	Task or Requirement	Requested Adjustments
	and (c)	Projects annually, as well as every project at least once every 5 years.	inspections.
C.3.j.i.(1). – Clayton #42 – STL	C.3.j.i.(1)	Requires each Permittee to prepare and implement a Green Infrastructure Plan (framework for Plan due in 12 months; Plan due in 2019)	Extend the time for submittal of the required framework to a minimum of 20 months.
C.4., C.5., C.6. – Clayton #43 – STL	C.4, C.5, C.6	For inspections of businesses and construction sites, and for response to illicit discharges, requires that corrective actions of "actual or potential non-stormwater discharges" be implemented before the next rain event, but no longer than 10 business days after potential or actual non-stormwater discharges are discovered.	Delete references that specify types of corrective actions and timeframes for implementation, as these create a disincentive for identifying minor problems and create unproductive administrative work.
C.5.e.iii. – Clayton #44 –	C.5.e.iii.	Requires Permittees to report a list of mobile cleaners operating in their jurisdiction.	Delete, as this information is unavailable.
C.5.e.iii. – Clayton #45 – STL	C.5.e.iii.	Requires Permittees to report a list and summary of specific outreach events and education conducted to the different types of mobile businesses	Delete and clarify that requirements to inspect mobile businesses and abate discharges is covered by existing requirements elsewhere in Provisions C.4 and C.5.
C.7.a. – Clayton #46 –	C.7.a.	Permittees are required to mark and maintain "no dumping" markings on storm drain inlets.	Move this task to Provision C.2.
C.7.b. – Clayton #47 – STL	C.7.b.	Requires Permittees to participate in or contribute to "advertising" campaigns on specified subjects and assess results.	Change "advertising" to "outreach" to make explicit that a variety of methods, including social media, may be used. Delete references to specific subjects. Allow more flexibility.
C.9.c. – Clayton #48	C.9.c.	Requires Permittees to observe pesticide applications by their contractors.	Delete requirement.
C.10.a.i.a. – Clayton #49 – STL	C.10.a.i.a.	Requires Permittees to achieve a 70% load reduction by July 1, 2017	Extend this compliance date to 2018.
C.10.a.ii.b. – Clayton #50	C.10.a.ii.b.	Requires Permittees to ensure private properties plumbed directly to municipal storm drains are equipped with full trash capture devices or to verify "low" trash generation rate. Requires Permittees to investigate and map these properties.	Delete the mapping requirement and integrate inspections and enforcement into Provision C.4 (Commercial and Industrial Inspections).
C.10.b.1.a. – Clayton #51 – STL	C.10.b.1.a.	Specifies maintenance frequencies for full trash capture devices based on trash generation rates.	Set minimum frequency of 1x/year for all devices, to be adjusted based on maintenance experience. Required maintenance frequency

	Provision	Task or Requirement	Requested Adjustments
			is determined mostly by amount of leaf litter and type of device.
C.10.b.1.c. – Clayton #52 –	C.1O.b.1.c.	Requires Permittees to certify that full trash capture systems are maintained to meet standard.	State that systems are maintained, and maintenance program is designed to meet standard.
C.10.b.iv. – Clayton #53 – STL	C.10.b.iv.	Allows a credit of up to 5% toward trash reduction requirement for source control actions such as product bans.	Increase maximum to 20% to fully credit existing product bans and to create incentive for future source control actions.
C.10.e.i. – Clayton #54 – STL	C.10.e.i.	Creates a formula for crediting trash collected during additional creek and shoreline cleanups toward trash reduction requirement-at a 1:10 ratio, with a 5% maximum credit.	Make the ratio 1:3 and increase maximum credit to 10%.
C.10.e. – Clayton #55 – STL	C.10.e.	Credits on-land cleanups and litter reduction only if visual assessments show a categorical change (e.g., from "very high" to "high" trash)	Allow interim credit for demonstrated actions intended to achieve categorical change.
C.10.a.iii. – Clayton #56 – STL	C.10.a.iii.	Requires bioretention facilities to be equipped with a screen to qualify as full-trash-capture facilities.	Specify that these facilities qualify as fulll trash capture. Screens could cause flooding.
C.10.b.iv. – Clayton #57 – STL	C.10.b.iv.	Requires observations of creeks and shorelines to determine whether trash control actions have prevented trash from discharging to receiving waters.	Restate purpose of observations, as it is not possible to determine tha trash originated from storm drains.
C.10.e.ii. – Clayton #58 – STL	C.10.e.ii.	Provides 1:10 ratio up to 10% maximum credit for actions to reduce direct discharge of trash (e.g. dumping, encampments).	Increase ratio to 1:3, with no maximum, as in some locations this is th predominant source of trash.
C.10.f.ii. – Clayton #59 – STL	C.10.f.ii.	Produce an updated trash generation map each year.	Tie updated maps to compliance dates (for 70% and 100%).

CLEAN WATER ACTION

TO: Regional Water Quality Control Board, Region II

FROM: Miriam Gordon, State Director, Clean Water Action

DATE: July 8, 2015

RE: Comments on Draft Municipal Regional Stormwater Permit, Order No. R2-2015-OXXX Provision C.10- Trash Load Reduction

Clean Water Action welcomes the opportunity to provide comment on the proposed revised tentative order and municipal stormwater permit for trash load reduction- Order No. R2-2015-OXXX, Provision C.10. Some of what staff has proposed is an improvement from the earlier order, specifically, the requirement for receiving water monitoring. However, there are many areas of the order that are vague and require greater specificity, and our organization is deeply concerned about the source reduction credit proposed.

Provision C.10 – Clean Water Action (CWA) #1 - DCB

C.10.a Trash Reduction Requirements- the standard for compliance is unclear

One significant issue is lack of explanation of how the standard set for final compliance will be measured. From our read of the proposed order, there are vague compliance standards. For receiving waters, permittees must demonstrate 100% reduction of trash load by 2022, or no adverse impact to receiving waters. There is no explanation of what "no adverse impact to receiving waters" means. This needs to be specified.

Provision C.10 – Clean Water Action (CWA) #2 - DCB

In the Trash Generation Management Areas, it seems that permittees must demonstrate both full capture device equivalency and a reduction of 2009 Very High, High, and Moderate trash generation areas to Low trash generation or better by the mandatory deadlines. The problem with full capture device equivalency – i.e. "actions equivalent to full trash capture" that "send no more trash down the storm drain system than a full capture device would allow, which is essentially no trash discharge except in very large storm flows" - is that there have been no determinations of how much trash is sent down a storm drain system by a full capture device in very large storm flows.

Provision C.10 – Clean Water Action (CWA) #3 - DCB

Under Porter Cologne, water quality objectives must be set at a level that is technically and scientifically necessary to protect beneficial uses. There is no acceptable level of trash that may be present in our state's waters without impairing a number of beneficial uses, including recreation, habitat, and municipal and domestic water supply uses. Current efforts in the state to address trash in our waterways support this conclusion. For example, the analysis surrounding the Los Angeles River Watershed TMDL found that beneficial uses would not be supported in the presence of any amount of trash. As was found by the Los

Angeles Regional Water Board, "since littering is unlawful, a target of zero trash" is the "only defensible position."[1] Regional Water Board staff "found no study to document that there is an acceptable level of trash that will cause no harm to aquatic life."[2] The Los Angeles Regional Water Board's rationale that "even a single piece of trash can be detrimental, and no level of trash is acceptable"[3] can and should be applied to waters across the state. Therefore, it is our recommendation that 100% and "no adverse impact" should be something equivalent to no trash being present in receiving waters as demonstrated by visual and in-water monitoring.

c.10.b Demonstration of Trash Reduction Outcomes

Provision C.10 – Clean Water Action (CWA) #4 - DCB

- **Full Trash Capture Systems-** the Board is asking permittees to demonstrate that they are adequately maintaining their full capture devices by providing records of maintenance. Although the order specifies the number of times per year for different types of devices that maintenance should occur, there is no specification of when the maintenance must occur. We suggest that additional guidance be provided such that inspections occur following storm events. This is the time when full capture devices are likely to become clogged or full.

Provision C.10 – Clean Water Action (CWA) #5 - DCB

- **Source Control-** We recognize the challenge of assigning credit for load reduction for various actions and appreciate the Board's inclusion of credits for source control. Our first recommendation is that the term "source control" be revised to be "source reduction." Control is what the permittees are doing by managing, capturing, and cleaning up trash. Eliminating or reducing trash at the source is a different idea entirely and we believe that is what the Board intended this 5% credit to be about. It is important to incentivize source reduction, but a total of 5% for all source reduction actions is likely too little, especially since permittees are being offered a 15% credit for addressing direct trash discharges.

  Source reduction could achieve a great deal of overall trash load reduction and save permittees and taxpayers millions of dollars in reduced trash management. For example, in Clean Water Action's 2011 street litter study, straws represented 4% of street litter, plastic lids on beverage containers was 4%, bottle caps were 3%, paper cups were 2%.[4] There is a source reduction action for each of these items that could virtually eliminate these products in the litter stream. Combined, these items alone could achieve a 13% reduction in trash. Adding in other actions to reduce take-out food and beverage packaging, bags, and foam, permittees could achieve even greater reductions of trash.

  Reducing trash generation at the source – basically eliminating trash that needs to be controlled or managed at great expense to taxpayers- provides the most environmentally preferable and economically beneficial solution to the problem of trash in the environment.

[1] *City of Arcadia et al. v. Los Angeles RWQCB et al.*, 135 Cal.App.4th 1392, 1410 (Jan. 26, 2006).
[2] Id.
[3] *Id.* at 1406.
[4] http://www.cleanwater.org/ca/rethinkdisposable/littersourcesstudy

CLEAN WATER ACTION

Provision C.10 – Clean Water Action (CWA) #6 - DCB

In addition, this order fails to address trash smaller than 5mm flowing through MS4s. Although the general industrial permit requires that plastic processors implement Best Management Practices to control pre-production plastic pellets, there is no control or regulation for non-pellet trash smaller than 5mm. This is a significant failure. Small trash flowing through MS4 system should be included or addressed. Source reduction is the only measure in this order that will reduce small debris less than 5mm.

Our recommendation is that the Board provide a greater incentive for permittees to pursue source reduction measures, by allowing them an opportunity to make a case for or demonstrate that their actions deserve a higher percent of credit based on data that they provide, capped at 15%.

• **Provision C.10 – Clean Water Action (CWA) #7 - DCB**

Receiving water monitoring- The addition of a receiving water monitoring requirement in addition to on-land visual inspections is appropriate. However, the information cities are expected to submit for their observations needs to be defined. The permit should require permittees to do two types of receiving water monitoring- (1) monitoring of trash at the storm drain outfall, at least two wet season samples and (2) in water assessment, which should be based on the soon to be developed Tracking Trash monitoring program. Since the in water assessment methodology (i.e. in stream flow monitoring) of the Tracking Trash program will not be completed in time for the 2016 milestone, a shoreline visual assessment using the Rapid Trash Assessment or equivalent methodology should be required for this milestone as well as monitoring of trash at the storm drain outfall.

C.10.c Trash Hotspot Selection and Cleanup

Provision C.10 – Clean Water Action (CWA) #8 - DCB

Data- For visual assessments, photo documentation should be accompanied by a report that characterizes and quantifies the products identified in the photos. It is essential to identify products in hot spots in order for permittees to obtain an improved understanding of the types of trash or litter and their sources. If permittees have a hard time achieving compliance, they will need to work harder to get at the sources. Failure to obtain data during monitoring will make it a challenge to work upstream at reducing trash at the source.

A note about Lack of Enforcement

Provision C.10 – Clean Water Action (CWA) #9 - DCB

There are no consequences for submitting a bad plan. The Board must certify or accept a plan and if it finds that a plan is inadequate, the Board should determine what the full capture equivalent is for the city. For failure to meet the attainment of 2017 mandatory deadline- the Board is suggesting a report of

noncompliance. The permitee should be required to do full capture – or the Board specifies what combination of full capture and other measures to create full trash capture equivalent will be required.

The mitigation requirements for not meeting mandatory reductions (70% by 2017 & 100% by 2022) and "performance guidelines" (60% by 2016, 80% by 2019) aren't strong enough. If cities don't achieve the performance guidelines, their plan for meeting the mandatory reductions should include the few activities

that are widely accepted as reducing trash – street sweeping, creation of new business improvement districts, or other regular on land cleaning, and full trash capture everywhere that it is feasible. They can include other activities in their plan, but only in addition to these more concrete actions.

Questions or comments can be directed to Miriam Gordon, mgordon@cleanwater.org, (415) 369-9170

CITY OF CONCORD
1950 Parkside Drive, MS/01
Concord, California 94519-2578
FAX: (925) 798-0636

OFFICE OF THE MAYOR
Telephone: (925) 671-3158

Concoril

July 8, 2015

Bruce Wolfe, Executive Officer
California Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay Street
Oakland, CA 94612

Via email to: mrp.reissuance@waterboards.ca.gov

Subject: **Opposition to the Tentative Order Reissuing the Municipal Regional Stormwater Permit (MRP 2.0)**

Dear Mr. Wolfe and Members of the Board:

Thank you for the opportunity to comment on the TeJ1tative Order Reissuing the Municipal Regional Stormwater Permit (MRP 2.0.) The City of Concord continues to support the Water Board's objectives of reducing stormwater pollution and protecting our local creeks, the delta and San Francisco Bay.

General – Concord #1 – STL

For the past two years, representatives from Contra Costa municipalities, along with a consortium of Bay Area agencies and BASMAA, have been engaged in an ongoing dialogue with your staff regarding: experience gained and lessons learned from the current MRP; how to apply that experience toward maximizing the effectiveness of MRP 2.0, and ensuring that the requirements contained in MRP 2.0 provide for a clear path to compliance.

This process generated many new ideas and approaches that build upon experience gained and identify how to expand upon and enhance our stormwater pollution prevention efforts. It also advocated consolidating or eliminating "less beneficial tasks" in the permit, extending implementation dates, reducing reporting, and adjusting ongoing tasks to reduce effort while maintaining effectiveness in protecting water quality.

This approach acknowledges the reality that new or additional funding sources required to implement the new and expanded requirements contained in MRP 2.0 have yet to be identified; and, advocates allocating limited resources in ways that would focus upon, and maximize effectiveness of the major new and expanded mandates.

Despite the extensive effort, few of these ideas were carried forward into MRP 2.0 Therefore, the City of Concord opposes MRP 2.0 as it is currently drafted; asks that your Board consider the following comments, and direct Water Board staff to work with permittees to revise the Tentative Order.

C.3. and C.12. – Concord #2 – STL

Major New and Expanded Mandates Should Be Offset by Eliminating Less Beneficial Tasks

The draft Tentative Order includes a new mandate to develop Green Infrastructure Plans. This coordinated, multi-year effort represents a significant paradigm shift toward developing comprehensive long range plans that will significantly reduce the amounts of urban runoff pollutants, including the pollutants of concern, flowing into receiving waters. MRP 2.0 requires that permittees develop a framework for the development of the Green Infrastructure plan and have it approved by its governing body, mayor, city manager or county manager within 12 months. This timeline is unrealistic in regards to budgeting and allocating resources to develop such a framework, the time required to develop the framework, and navigate the process to gain approval. The implementation of such efforts will also require significant investment on the part of all permittees, for which funding is undefined.

C.7. – Concord #3 – STL

The draft Tentative Order also includes public information and outreach requirements including advertising campaigns, media relations, public outreach events, and stormwater pollution prevention education. Though we believe that such outreach and education is important, we also believe that focused efforts at a regional level, supported by permittees would be more effective than individual campaigns by permittees or countywide programs. There is great value in consistent message throughout the region.

General – Annual Report – Concord #4 – STL

As issuance of MRP 2.0 is anticipated mid-year, where permittees are under MRP 1.0 until the effective date of MRP 2.0, we are requesting clarity on the annual reporting requirements for the year ending June 30, 2016. We are requesting that one reporting framework be prepared and approved by the Board prior to issuance of MRP 2.0 so the permittees can focus their efforts on appropriate actions.

In addition, the draft Tentative Order would require our City of Concord to do the following:

C.12. – Concord #5 – STL

- Plan and implement a program to manage PCB-containing materials in commercial and industrial structures constructed or remodeled between 1950 and 1980 at the time those structures are demolished. The most effective programs would be one that are consistent either region wide or state wide and would be modeled after existing effective programs such as asbestos or lead abatement. We are requesting that the Board consider implementation of a regional or state program administered by the state where municipalities require contractors to provide appropriate documentation that they have filed with the state prior to the issuance and closure of demolition permits;

C.10. – Concord #6 – STL

- Demonstrate trash load reductions of 70% from 2009 levels by July 1, 2017 and 100% by July 1, 2022-by installing full trash capture devices or implementing equivalent trash control measures and evaluating their effectiveness through visual surveys. Though these implementation levels were required in MRP 1.0, additional intermediate reduction levels are

outlined in the draft Tentative Order including 60% by July 1, 2016 and 80% by July 1, 2019. As trash loads are reduced, each incremental reduction requires increased efforts. Thus we are requesting removal of the intermediate targets and additional time to meet the load reduction requirements; and

C.10. – Concord #7 – STL

- Require private property owners in high-trash and moderate-trash areas to install full trash capture devices or implement equivalent measures.

These major new mandates will require a significant, sustained effort to implement, absent any new or additional funding source.

General – Concord #8 – STL

The attached table summarizes adjustments that have been presented to Water Board staff that would improve program efficiencies or eliminate certain less beneficial tasks. Comprehensive information and rationale has been presented to support these requests. Inclusion of these changes in the MRP 2.0 will allow permittees to focus and apply our limited resources to the major new and expanded mandates, in order to achieve the greatest positive impact.

We request that your staff review the attached table and work with permittee representatives to make most or all of the recommended adjustments to "less beneficial tasks."

C.3. – Concord #9 – STL

Of particular concern to the City of Concord is the inclusion of the following proposal that "any Regulated Project that was approved with no Provision C.3. stormwater treatment requirements under a previous MS4 permit and that has not begun construction by the effective date of this permit, shall be required to fully comply with the requirements of C.3.c and C.3.d." This effective sunset on "grandfathered" projects poses potentially serious legal ramifications for entitled projects with conditions of approval which are preserved under various vested tentative maps.

C.12. – Concord #10 – STL

Permittees Must Have a Clear Path to Compliance

Considerable time and effort has been spent discussing how to reduce levels of pollutants of concern flowing into our waterways, particularly PCBs. Failure to achieve the reductions specified in MRP 2.0 could result in the City of Concord being held in noncompliance. However, as drafted, MRP 2.0 provides no clear path for permittees to avoid noncompliance. Some examples include:

C.12. – Concord #11 – STL

- The draft Tentative Order mandates achieving specified reductions in the total quantity of PCBs discharged from municipal storm drains.[1] A major means of achieving these reductions is through removal of PCBs during building demolitions. However this fails to acknowledge that permittees have no control over timing of when properties redevelop. *We ask that development of a program to control PCBs during building demolitions, rather than applying controls to a specified number of buildings demolished, should represent compliance with this requirement.*

C.12. – Concord #12 – STL

- The Tentative Order includes (in the Fact Sheet) an incomplete method to achieve stipulated reduction credits for each building demolished with PCB controls, for each redeveloped site with new bioretention facilities, and for finding and abating concentrated sources of PCBs. Looking for hidden PCB sources is a good idea, but permittees can't guarantee that they will find them and be able to abate them. *We ask that development of a program to systematically identify and review potential sources, and refer them to appropriate agencies for abatement, be the basis for credit toward compliance.*

C.12. – Concord #13 – STL

- The draft Tentative Order allows only four (4) months after Permit adoption for permittees to submit a more complete "measurement and estimation methodology and rationale" for stipulating PCB reduction credits. *We ask that BASMAA's PCBs programs accounting methodology be finalized, incorporated into the permit, and then used to calculate PCBs load reductions during permittee annual reporting.*

C.12. – Concord #14 – STL

- Water Board staff has stated the threat of noncompliance is intended to strongly encourage permittees to find and abate hidden PCBs, and that Water Board staff would use "enforcement discretion" if and when permittees are unable to meet the mandated PCB load reductions. From a municipal government perspective, new financial and staffing commitments must be based on agreed upon goals and objectives, and have well-defined metrics for measuring progress. *We ask that the load reduction peiformance criteria not be the point of compliance, and that Water Board staff work with permittee representatives to revise the Draft Tentative Order so that it provides a clear and feasible pathway for permittees to attain compliance. Most factors that are key to meeting the load reduction peiformance criteria are uncertain and many are not within permittee control (e.g., extent of source properties that will be found, building demolition rates, and redevelopment rates), making achievement of compliance uncertain.*

The City of Concord appreciates the efforts by your staff to develop permit requirements that are implementable and effective in improving surface water quality-a goal which we share. We look forward to resolution of the remaining issues and to implementing MRP 2.0.

Sincerely,

Timothy S. Grayson
Mayor, City of Concord

cc: Thomas Dalziel, Contra Costa Clean Water Program
Concord City Council
Valerie Barone, City Manager
Victoria Walker, Community and Economic Development Director
Joelle Fockler, City Clerk

Enclosures: Table 1 – Request for Changes to the May 11, 2015 Tentative Order

Table 1 – Request for Changes to the May 11,2015 Tentative Order

Requested Adjustments to Improve Efficiency in the Municipal Regional Permit, Including Elimination of "Less Beneficial Tasks"

	Provision	Task or Requirement	Requested Adjustments
C.2.f. – Concord #15 – STL	C.2.f.	Corporation Yard inspection requirements.	Eliminate this requirement, as it duplicates the requirements for inspections already included in the Stormwater Pollution Prevention Plans (SWPPPs) for these same facilities.
C.3.b.i. – Concord #16 – STL	C.3.b.i.	Eliminates grandfathering of Regulated Projects with vested tentative maps approved prior to advent of C.3 requirements	Allow municipalities flexibility to require these applicants to implement stormwater treatment requirements only to the extent not in conflict with state law and existing development agreements
C.3.b.ii.(4) – Concord #17 – STL	C.3.b.ii.(4)	Certain Roads Projects are Regulated Projects under Provision C.3	Delete this requirement as the intent is superseded by the Green Infrastructure requirements in Provision C.3.j.
C.3.b.ii.(1)(c) – Concord #18 – STL	C.3.b.ii.(1)(c)	Requires projects where 50% or more of existing impervious area is redeveloped to provide treatment for entire area.	Delete this requirement as the intent is superseded by the Green Infrastructure requirements in Provision C.3.j.
C.3.e.ii. – Concord #19 – STL	C.3.e.ii.	Special Projects-allowance to use non-LID treatment on smart growth development projects that meet specified location and gross density criteria.	To avoid a disincentive for including pedestrian amenities, allow public plazas to be omitted from calculation of project gross density.
C.3.e.v(1) – Concord #20 – STL	C.3.e.v.(1)	Requires Permittees to track Special Projects that have been identified (application submitted) but not approved.	Delete this requirement, as the number of projects, and amount of impervious area, has proven to be small.
C.3.e.v(2) – Concord #21 – STL	C.3.e.v.(2)	Requires Permittees to conduct and document an analysis of the feasibility of LID treatment for Special Projects.	Delete this requirement, as it creates considerable additional effort for applicants and Permittees without any expected water-quality benefit.
C.3.g.vii. – Concord #22 – STL	C.3.g.vii.	Requires Contra Costa municipalities (through CCCWP) to submit a technical report describing how Contra Costa will implement current Permit hydromodification management requirements.	Delete requirement to submit a technical report. CCCWP submitted a 2013 report on the results of a multi-year monitoring study that concluded current policies and criteria meet these requirements.
C.3.g.iv. – Concord #23 – STL	C.3.g.iv.	Allows Permittees to propose a different method for sizing hydromodification management facilities that is not biased against Low Impact Development, but requires a Permit amendment before using the method.	Delete requirement for a Permit amendment before the method is used. Note: the Fact Sheet accompanying the Tentative Order states that Water Board Executive Officer approval would be required, not a Permit amendment.
C.3.h.ii.(6)(b)-(c) – Concord #24 – STL	C.3.h.ii.(6)(b) and (c)	Requires Permittees to inspect 20% of Regulated Projects annually, as well as every project at least once every 5 years.	Delete the annual requirement to allow flexibility in scheduling inspections.

	Provision	Task or Requirement	Requested Adjustments
C.3.j.i.(1) – Concord #25 – STL	C.3.j.i.(1)	Requires each Permittee to prepare and implement a Green Infrastructure Plan (framework for Plan due in 12 months; Plan due in 2019)	Extend the time for submittal of the required framework to a minimum of 20 months.
C.4, C.5., C.6. – Concord #26 – STL	C.4, C.5, C.6	For inspections of businesses and construction sites, and for response to illicit discharges, requires that corrective actions of "actual or potential non-stormwater discharges" be implemented before the next rain event, but no longer than 10 business days after potential or actual non-stormwater discharges are discovered.	Delete references that specify types of corrective actions and timeframes for implementation, as these create a disincentive for identifying minor problems and create unproductive administrative work.
C.5.e.iii. – Concord #27 – STL	C.S.e.iii.	Requires Permittees to report a list of mobile cleaners operating in their jurisdiction.	Delete, as this information is unavailable.
C.5.e.iii. – Concord #28 – STL	C.S.e.iii.	Requires Permittees to report a list and summary of specific outreach events and education conducted to the different types of mobile businesses	Delete and clarify that requirements to inspect mobile businesses and abate discharges is covered by existing requirements elsewhere in Provisions C.4 and C.5.
C.7.a. – Concord #29 – STL	C.7.a.	Permittees are required to mark and maintain "no dumping" markings on storm drain inlets.	Move this task to Provision C.2.
C.7.b. – Concord #30 – STL	C.7.b.	Requires Permittees to participate in or contribute to "advertising" campaigns on specified subjects and assess results.	Change "advertising" to "outreach" to make explicit that a variety of methods, including social media, may be used. Delete references to specific subjects. Allow more flexibility.
C.9.c. – Concord #31 – STL	C.9.c.	Requires Permittees to observe pesticide applications by their contractors.	Delete requirement.
C.10.1.i.a. – Concord #32 – STL	C.1O.a.i.a.	Requires Permittees to achieve a 70% load reduction by July 1, 2017	Extend this compliance date to 201B.
C.10.a.ii.b. – Concord #33 – STL	C.1O.a.ii.b.	Requires Permittees to ensure private properties plumbed directly to municipal storm drains are equipped with full trash capture devices or to verify "low" trash generation rate. Requires Permittees to investigate and map these properties.	Delete the mapping requirement and integrate inspections and enforcement into Provision C.4 (Commercial and Industrial Inspections).
C.10.b.1.a. – Concord #34 – STL	C.1O.b.1.a.	Specifies maintenance frequencies for full trash capture devices based on trash generation rates.	Set minimum frequency of 1x/year for all devices, to be adjusted based on maintenance experience. Required maintenance frequency is determined mostly by amount of leaf litter and type of device.

C.10.b.1c. – Concord #35 – STI	C.1O.b.1.c.	Requires Permittees to certify that full trash capture systems are maintained to meet standard.	State that systems are maintained, and maintenance program is designed to meet standard.

	Provision	Task or Requirement	Requested Adjustments
C.10.b.iv. – Concord #36 – STL	C.10.b.iv.	Allows a credit of up to 5% toward trash reduction requirement for source control actions such as product bans.	Increase maximum to 20% to fully credit existing produ create incentive for future source control actions.
C.10.e.i. – Concord #37 – STL	C.10.e.i.	Creates a formula for crediting trash collected during additional creek and shoreline cleanups toward trash reduction requirement-at a 1:10 ratio, with a 5% maximum credit.	Make the ratio 1:3 and increase maximum credit to 10
C.10.e. – Concord #38 – STL	C.10.e.	Credits on-land cleanups and litter reduction only if visual assessments show a categorical change (e.g., from "very high" to "high" trash)	Allow interim credit for demonstrated actions intended t categorical change.
C.10.a.iii – Concord #39 – STL	C.10.a.iii.	Requires bioretention facilities to be equipped with a screen to qualify as full-trash-capture facilities.	Specify that these facilities qualify as full trash capture. cause flooding.
C.10.b.iv. – Concord #40 – STL	C.10.b.iv.	Requires observations of creeks and shorelines to determine whether trash control actions have prevented trash from discharging to receiving waters.	Restate purpose of observations, as it is not possible to trash originated from storm drains.
C.10.e.ii. – Concord #41 – STL	C.10.e.ii.	Provides 1:10 ratio up to 10% maximum credit for actions to reduce direct discharge of trash (e.g. dumping, encampments).	Increase ratio to 1:3, with no maximum, as in some loc predominant source of trash.
C.10.f.ii. – Concord #42 – STL	C.10.f.ii.	Produce an updated trash generation map each year.	Tie updated maps to compliance dates (for 70% and 1

July 10, 2015

Dr. Terry Young, PhD, Chair
Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay Street, Suite 1400
Oakland, CA 94612

Subject: Comments on Tentative Order R2-2015-XXXX, NPDES No. CAS612008

Dear Dr. Young and Regional Board Members,

Thank you for the opportunity to review and comment on this Tentative Order. My comments in this letter are focused on bioretention requirements in section C.3. Accompanying this letter is list of other specific recommended changes to Provisions C.3 and C.10 of the tentative order along with justification for those changes.

The following improvements must be made to Provision C.3 to bring it in line with other contemporary Phase I California permits.

- Distinguish between bioretention designs that retain the design storm and those with underdrains that treat and release a portion of the design storm (biofiltration)
- Restore a BMP selection hierarchy that prioritizes BMPs that retain the design storm (rainwater harvesting, infiltration and bioretention without underdrains) above those that treat and release a portion of the design storm (biofiltration).
- Establish clear treatment goals for biofiltration and provide a process for review and approval of alternative designs that meet those performance goals

These changes and supporting information are discussed in more detail below.

Post-construction Best Management Practice (BMP) selection hierarchy

Section C.3 is a critical component of this program as it establishes the framework for new development and redevelopment project design and approval. The current tentative order has been modified from the first draft to include the assumption that bioretention systems as described in section C.3 are as effective as infiltration and rainwater harvest systems. This assumption is then used to justify a decision to allow C.3 bioretention to be used without first exhausting stormwater infiltration and rainwater harvesting options. This would be fine if the C.3 bioretention systems were always designed to retain the entire design storm. However, they will more commonly be designed with an underdrain, through which treated water and residual pollutants will be discharged.

C.3 – Distinguish between bioretention designs that retain the design storm and biofiltration, which employs underdrains and release a portion of the design storm. The failure to distinguish between true bio-*retention* designs with no underdrain, and bio-*filtration* designs that release water downstream makes this tentative order inconsistent with other contemporary Phase I NPDES permits in California **– Contech #1 – JBO**

The failure to distinguish between true bio-*retention* designs with no underdrain, and bio-*filtration* designs that release water downstream makes this tentative order inconsistent with other contemporary Phase I NPDES permits in California. Other permits covering Los Angeles, Orange County and San Diego regions require that retention options be used where feasible and allow biofiltration or "bio-treatment" facilities only where retention of the design storm has been demonstrated to be infeasible. This permit must be changed to restore retention of the design storm to the top tier post construction stormwater management strategy. C.3 bioretention designs that include an underdrain must be distinguished from true bioretention systems and must be used only where retention systems are infeasible.

C-3 - Restore a BMP selection hierarchy that prioritizes BMPs that retain the design storm (rainwater harvesting, infiltration and bioretention without underdrains) above those that treat and release a portion of the design storm (biofiltration) – Contech #2 – JBO

This assumption about biofiltration equivalency found in the tentative order is linked back to a "White Paper" on Provision C.3 in MRP 2.0 provided by BASMAA which states:
"Bioretention is, on balance, equal in water-quality effectiveness to harvesting/use or infiltration."

This is a patently false assumption since C.3 bioretention systems most often do not retain the water quality event in its entirety. As the white paper notes in section 4.2, "few developable sites have sufficient soil permeability to support infiltration of the specified amount of runoff". It is further noted that an infiltration rate of 1.6 inches per hour is required for the standard biofiltration design to infiltrate the design storm. This is far greater than the actual infiltration rate at most locations governed by the MRP, so it logically follows that the vast majority of bioretention systems designed to current C.3 standards will routinely discharge treated water during storms. Where runoff is discharged from a treatment facility, pollutants will also be discharged unless that treatment facility is 100% effective for all pollutants. Put simply, any flow-through treatment system will be less effective than a retention system that has no discharge. This is the basis by which other permits have elevated retention BMPs above flow-through treatment BMPs.

[Not a direct comment on the T.O., but might be of note]Other Phase I NPDES permits and implementation manuals in California identify a threshold native soil infiltration rate between 0.3 and 0.5 inches per hour above which infiltration is considered feasible and must be used as long as there are no other site constraints. Infiltration BMPs infiltrate the entire design storm and do not need underdrains. This class of BMPs includes bioretention (without an underdrain) and other infiltration systems like infiltration trenches, infiltration basins and subsurface infiltration galleries.

Even at native soil infiltration rates lower than 1.6 inches per hour, infiltration systems are rarely bigger than 4 % of the contributing impervious drainage area since they can be designed with greater ponding depths. For example, an infiltration trench draining the water quality volume over 48 hours into soils with a permeability of 0.5"/hr could be designed with an effective ponding depth of 24 inches and would have a sizing factor of 3%. Where infiltration is feasible, infiltration BMP siting requirements have not proven overly burdensome in other areas of California. On the contrary, at higher infiltration rates and ponding depths, some systems can be significantly smaller than C.3 bioretention systems. For example, on very constrained sites, such as urban redevelopment or infill projects, subsurface infiltration BMPs can be placed under parking lots or roadways with no dedicated site footprint. Non-vegetated infiltration systems have no ongoing potable water demand and, depending on type of pretreatment used, may have a lower operation and maintenance burden.

Bioretention performance
The white paper notes that there has been a decade of experience with bioretention systems in the Bay Area. However the only pollutant removal effectiveness and runoff retention data presented in the report is for PCB and Methylmercury removal for four storms. Considering that the 5 inch-per-hour bioretention design is the very foundation of the post-construction stormwater mitigation program, it is astounding that in 10 years there has been no other water quality or runoff reduction data collected. **[Not a direct comment on the T.O., addressed in comment #3 below]**It is also surprising that the tentative order would essentially double down on this untested design by elevating it to equal status with retention BMPs.

The stated goal of Provision C.3 "is for permittees to use their planning authority to reduce pollutant discharges and runoff flow into the storm drain system"[i]. How can we be sure that C.3 bioretention applied on virtually every priority project is actually reducing the discharge of pollutants of concern to the maximum extent practicable if no performance data is collected? Provision C.3 requirements result in significant costs to the development community and are the best tool for minimizing the impact of urban development. Therefore, it is imperative that we move beyond generous but

untested assumptions about performance and design and toward careful, quantitative assessment of performance. We owe it to the environment, development community, and our own scientific integrity to restore the iterative process by measuring the impact of our regulatory directives.

Thankfully, bioretention and biofiltration system performance has been assessed in other places. There are two readily available performance summaries that shed light on the likely performance of the C.3 bioretention system. The first is the International Stormwater BMP Database (www.bmpdatabase.org) which includes results from 22 bioretention studies. In 2014, a summary report[ii] was published that detailed bioretention performance for a variety of conventional stormwater pollutants. A subset of that data is presented below in Table 1. Significant removals for TSS, E. coli, Total Copper, Total Zinc, and Total Nitrogen were observed based on median influent and effluent concentrations. A significant net export of phosphorus was observed. While the system design, sizing and media composition of systems represented in this summary vary compared to the C.3 standard, they do suggest that biofiltration systems are effective for sediment and sediment bound particles, less effective for dissolved or very fine pollutants and can actually be a source of nutrient pollution.

Bioretention BMP performance from the 2014 International Stormwater BMP Database Pollutant Category Summary Report for Solids, Bacteria, Nutrients and Metals							
Parameter		TSS (mg/L)	E. coli (#/100mL)	Total Copper (µg/L)	Total Zinc (µg/L)	Total Phosphorus (mg/L)	Total Nitrogen (mg/L)
Count of Studies		22	4	7	6	27	13
EMC Count	Influent	461	61	125	126	515	245
	Effluent	393	61	107	112	435	194
25th percentile	Influent	18	44	3.03	10.7	0.062	0.75
	Effluent	4.9	6	2.81	2.72	0.08	0.59
Median	Influent	38.1	290	5.21	19.7	0.12	1.16
	Effluent	9.9	101	5.79	12.2	0.24	0.92
75th percentile	Influent	86	2400	9.7	53.5	0.246	1.87
	Effluent	20	2400	13.45	23	0.6	1.61

Table 1 - Bioretention BMP performance from the 2014 International Stormwater BMP Database Pollutant Category Summary Report for Solids, Bacteria, Nutrients and Metals

A second reference is an evaluation of biofiltration performance that was conducted by Roseen and Stone[iii] for the City of Seattle as part of an effort to understand how design criteria and media composition influence performance. As part of their research, they compiled site, design, and performance data for 80 field bioretention systems and 114 lab columns/mesocosms. Data from the International BMP Database were included in this pool as well as other research studies. Performance data were compiled as study summaries (e.g., study median influent, effluent, and removal efficiency).

Roseen and Stone then utilized design information to categorize systems into groups based on common combinations of factors. They then conducted a statistical evaluation of how performance was influenced by design factors such as presence/absence of mulch layers, use of compost in media, infiltration rate of media, ratio of tributary to biofiltration area, presence/absence of pretreatment, presence/absence of internal storage layers, etc. Roseen and Stone found that the presence of compost in mixes strongly influences the variability in performance and potential export of pollutants,

including phosphorus, nitrogen, and copper. Systems without compost and/or with a high fraction of sand tended to provide the most consistent and best performance for these pollutants.

There have also been a few notable studies recently that are not included in either report that follow the C.3 bioretention design more closely. Recent bioretention studies, mainly in Washington State[iv,v,vi], have identified the potential severity of pollutant export of nitrogen, phosphorus, and copper from traditional biofiltration systems and have evaluated the potential sources of these issues. For example, a full scale field monitoring study in the City of Redmond (WA) observed export of nitrate on the scale of 100 mg/L higher than influent quality and dissolved copper on the scale of 10 to 20 µg/L higher than influent. Follow up research has shown that compost is consistently associated with export of copper, nitrogen and phosphorus, even when the highest quality compost products available are used in designs and at proportions as low as 10% of the media blend by volume. This research also found that some sand products can also contain elevated levels of phosphorus and copper. These studies are relevant because the standard biofiltration media specifications for Western Washington are similar to C.3 bioretention soil specifications, calling for 60 to 65 percent sand and 35 to 40 percent compost.

Taken together, these **C.3 -** reports demonstrate that bioretention effluent performance is highly variable and that where the water quality volume is not fully retained, biofiltration soil composition is critical, not just to maintain plant vitality and hydraulic capacity, but also to ensure significant pollutant removal performance. It also suggests that widespread implementation of sand and compost based systems may actually cause or contribute to nutrient impairments downstream. Rather than ignoring these lessons, the MRP 2.0 should be written to stimulate research that further illuminates the link between system design and performance and results in more effective BMPs. **– Contech #3 – JBO**

Engaging the private sector to reduce costs and stimulate innovation

The burden of BMP performance research and development does not have to be borne by the permittees. Ideally, the MRP 2.0 would establish a performance standard which must be met for flow–through treatment systems. If this clarity was provided, along with a verification process whereby performance relative to that standard could be assessed, the academic and private sectors would come alive to develop innovate solutions. This is the approach taken in some other states, notably Washington, where specific performance targets for TSS, oil, dissolved metals and phosphorus removal have been set and a program for the evaluation of emerging technologies has been established[vii]. Closer to home, a similar approach has been taken by the Sacramento Stormwater Quality Partnership[viii] where peer reviewed field verification of TSS removal performance is required for use of innovative stormwater treatment systems.

A simple change to the MRP would be to require that any flow-through treatment system, including any future media blends developed by the permittees or others, be demonstrated to meet the Basic (TSS), Phosphorus and Enhanced (dissolved Cu and Zn) performance standards set by the Washington State Department of Ecology. Those standards are attached to this letter. These standards are readily achievable by as is evidence by multiple approvals of public and private domain technologies by the Washington State Department of Ecology. Based on research of similar designs they are also likely unattainable by the current bioretention soil blend used in the region, and as such would represent an improvement in performance.

C.3 - Ideally, the MRP 2.0 would set a performance standard for flow–through treatment systems. This would stimulate research & is done in WA State. – Contech #4 – JBO

The San Diego region permittees recently completed their BMP Design Manual[ix] as a requirement of their Phase I municipal stormwater permit. That manual requires that infiltration and rainwater harvesting BMPs be used where feasible and that were these BMPs are infeasible, bioretention systems with a design similar to the C.3 bioretention

system be used with an underdrain. Alternatively, bio-treatment systems that meet Ecology performance standards can be used. In the meantime, the City of San Diego and others are collaborating to research and improve the performance of their bioretention soil mix. This is a fair and objective approach that should be replicated in this permit.

As it stands now, Section C.3.c.i.2.c.ii allows the permittees to propose alternate bioretention soil blends to regional board for approval. Unfortunately, this puts all the media development and testing responsibility on the shoulders of the permittees which would divert precious resources away from other important stormwater program activities. This provision should be improved in three ways. First, a performance target should be set for alternative designs. Currently, plant survivability and hydraulic capacity are the only criteria. Adopting the Ecology standards would be a good approach that is consistent with other programs. Second, alternative system designs should be allowed as well as alternative 5"/hr soil blends. As long as pollutant removal and hydraulic capacity performance standards are met, there is no reason to constrain systems to 5 inches per hour. Third, any party should be allowed to bring alternative designs forward for Regional Board review, not just permittees.

C.3.c.i.2.c.ii – Rather than allow permittees to propose alternate bioretention soil blends, (1) set a performance target for alternative designs, (2) allow alternative system designs and alternative 5 inch/hour soil blends, and (3) allow any party to bring alternative designs for Regional Board review – Contech #5 - JBO

Summary
The San Francisco Water Board has been a leader on stormwater issues in the past with some of the first hydromodification regulations and in pioneering the design of 5 inch per hour bioretention systems. However, much has been learned in the decade or more since these concepts took hold, and now section C.3 of this permit now lags behind other contemporary West coast permits in setting clear water quality and quantity goals and providing flexibility to meet them. To bring the permit up to speed with current research and understanding, and to stimulate academic and private sector investment in stormwater BMP research and development, I urge you to make the changes suggested in this letter as well as the accompanying comment log.

If you have any questions or would like more supporting information, please let me know.

Sincerely,

Vaikko P. Allen II, CPSWQ, LEED-AP
Director - Stormwater Regulatory Management

CONTECH Engineered Solutions
2550 Bonmark Dr., Ojai, CA 93023
Phone: 310-850-1736
vallen@conteches.com
www.contech-cpi.com

Note, the comments below are taken from the attached table:

C.10.a.iii - Change text to read: "A stormwater treatment facility implemented in accordance with provision C.3 may be deemed to be a full capture system only where it is sized to treat the trash capture design flow rate (peak 1-year, 1-hour flow rate) and where there is a maintenance plan in place to remove trash accumulating in the facility such that it does not create an adverse visual or water quality impact. – Contech #7 - JBO

C.10.b.i.a - Replace the last sentence of this section with:• For on-line systems that route flows exceeding the 1-year, 1-hour

flow rate through the trash storage area, specify that maintenance should be triggered when 25% of the storage volume is consumed, and must be conducted prior to 50% storage capacity consumption to remain in compliance.
• For “off-line” systems that route peak flows around the storage area, maintenance should be triggered by a 50% consumption of storage capacity and must be conducted prior to 100% storage volume consumption to remain in compliance.
• Inspection observation of 25% screen area occlusion should trigger maintenance for all systems, and all systems should be maintained prior to 50% screen blockage to remain in compliance
• Compliance with the permit should be based on documentation of the proper operational condition of controls. Areas draining to systems that are inadequately maintained should be considered out of compliance from the time of last documented acceptable condition. – Contech #8 – JBO

C.10.b.i.b - Add a requirement that before and after maintenance photos be collected and provided upon request of the Regional Board – Contech #9 – JBO

C.10.b.ii.b - Check reference in first sentence; no such section in permit. – contech #10 – JBO

C.10.b.ii.b - Add a receiving water monitoring based assessment of effectiveness of "other trash management actions", or add storm drain system inspection to the visual assessment actions. – Contech #11 – JBO

C.10.d, C.10.b.iv - Credits offered should be phased out over time; shoreline cleanups do not prevent discharges from MS4s. – Contech #12 – JBO

C.10.f.v.b - Change the penalty for not meeting compliance deadlines from triggering submittal of a report to requiring installation of full capture systems in the watershed at an accelerated pace to bring the permittee into compliance. If this accelerated schedule is not met, enforcement actions should be initiated including issuance of a notice of violation for noncompliance. – Contech #13 - JBO

References:

[i] Fact Sheet Findings. Page A-27. Section C.3-2
[ii] Geosyntec Consultants and Wright Water Engineers (2009). Pollutant Category Summary Report - Solids, Bacteria, Nutrients and Metals. Available at: http://www.bmpdatabase.org/performance-summaries.html

[iii] Roseen, R.M. and Stone, R.M. (2013). Bioretention Water Quality Treatment Performance Assessment. Technical Memorandum. Prepared for Seattle Public Utilities.

[iv] Herrera (2015 in draft). Analysis of Bioretention Soil Media for Improved Nitrogen, Phosphorous and Copper Retention, Draft Final Report, Prepared for Kitsap County by Herrera Environmental Consultants, Seattle, WA, March 16, 2015 (draft).

[v] Herrera (2015). Interim Project Report: City of Redmond Six Bioretention Swales Monitoring. Prepared for City of Redmond, by Herrera Environmental Consultants, Inc., Seattle, Washington. February 20, 2015

[vi] Herrera (2014). Final Report: 185th Avenue NE Bioretention Stormwater Treatment System Performance Monitoring. Prepared for City of Redmond, by Herrera Environmental Consultants, Inc., Seattle, Washington. March 6, 2014.

[vii] Washington State Department of Ecology. "Evaluation of Emerging Stormwater Treatment Technologies". Available online at: http://www.ecy.wa.gov/programs/wq/stormwater/newtech/index.html

[viii] Sacramento Stormwater Quality Partnership. Proprietary Stormwater Quality Treatment Devices, Available online at: http://www.beriverfriendly.net/newdevelopment/propstormwatertreatdevice/

[ix] Project Clean Water. Final Model BMP Design Manual for San Diego Region. Available online at: http://www.projectcleanwater.org/index.php?option=com_content&view=article&id=250

Suggested Changes
Draft NPDES NO. CAS 612008
Draft Municipal Regional Stormwater Permit

Submitted by Vaikko Allen, CPSWQ, Director - Regional Regulatory Management
CONTECH Engineered Solutions, LLC
Phone: 310-850-1736, e-mail: vallenv@conteches.com
Address: 2550 Bonmark Drive, Ojai, CA 93023

Section	Proposed Change or Comment	Justification
C.3.c.i.2.c.iI COVERED IN COMMENT #5	Add a baseline performance standard that alternative soil mixes must meet in order to be approved by the Executive Officer. Suggest referencing Basic, Enhanced and Phosphorus treatment goals set by the Washington State Department of Ecology. http://www.ecy.wa.gov/programs/wq/stormwater/newtech/index.html	Currently there is no water quality or volume reduction performance standard associated with the 5"/hr biofiltration system described in this section. Permittees may be developing innovative media blends intended to minimize irrigation demand or for other non-water quality purposes, but there is no clear performance goal for conventional pollutants like TSS, heavy metals, nutrients and oil. Without clear goals and performance verification requirements for any new media blend, how can we be sure that a new media blend will improve water quality? The fundamental purpose of this stormwater permit is to reduce the discharge of pollutants of concern to the maximum extent practicable. To assume that pollution removal is happening on the basis of media hydraulic capacity and plant vitality is to ignore current research that shows that sand and compost bioretention media blends frequently are a source of nutrient enrichment and at times also export TSS and heavy metals.
C.3.c.i.2.c.iI COVERED IN COMMENT #5	Add a provision allowing alternative system designs to be submitted to the Executive Officer for approval on the basis that they will provide an equal or greater load reduction for conventional pollutants of concern as compared to the 5"/hr design described in this section.	Regulations are most effective when they set clear performance standards and allow the private sector to innovate to develop more efficient means of meeting those standards. The biotreatment system described in this section shall be designed to "maximize stormwater runoff retention and pollutant removal". This is not a quantitative standard and does not provide a useful basis for innovation. However, the performance of conventional biotreatment systems can be estimated using bioretention results from the International Stormwater BMP Database and other high quality studies of similar designs. These pollutant removal and effluent concentration results can be used as a performance benchmark against which innovative systems can be judged. Innovative systems that can be demonstrated to provide similar or better pollutant load reduction should be considered for approval regardless of whether they are created by permittees or by private industry.

Section	Proposed Change or Comment	Justification
C.10.a.ii a	Change first sentence to read: "Permittees shall implement trash prevention and control actions, including full capture systems or other trash management actions, or combinations of actions, with trash discharge control equivalent to or better than fill trash capture systems, **to eliminate the discharge of trash from the MS4 system.**	This section seems to establish a low trash generation rate (<5 gallons/acre/year) as the compliance target. This is not the same as zero discharge of trash which is the only defensible water quality standard. Reducing trash generation rates will presumably lead to lower trash discharges, but the trash discharge prohibition should not be replaced with a loading standard.
C.10.a.iii	Change text to read: "A stormwater treatment facility implemented in accordance with provision C.3 **may be deemed to be a full capture system only where it is sized to treat the trash capture design flow rate (peak 1-year, 1-hour flow rate) and where there is a maintenance plan in place to remove trash accumulating in the facility such that it does not create an adverse visual or water quality impact.**	C.3 devices can be sized to treat the water quality flow rate resulting from a 0.2"/hr rainfall intensity per section C.3.d.i.2.a. The full capture system definition in section C.10.a.iii sets the trash capture design storm as the one-year, one-hour event which ranges from about 0.3 inches per hour to about 0.9 inches per hour in the area covered by this permit. So, typically sized C.3 facilities will be undersized by a factor of 2-4 for most locations. Peak one-year, one-hour precipitation intensities for sites in the MRP area can be easily retrieved from the NOAA Precipitation Frequency Data Server (http://hdsc.nws.noaa.gov/hdsc/pfds/). Sending the excess flow through the C.3 facilities may overload those facilities hydraulically and cause scouring of mulch and soil materials which can degrade pollutant removal performance. Screened outlets may become clogged by landscaping materials and debris which can cause flooding. Trash that is captured in the facilities, may also cause aesthetic blight and can be remobilized by wind and wildlife.

Section	Proposed Change or Comment	Justification
C.10.b.i.a	Replace the last sentence of this section with:**• For on-line systems that route flows exceeding the 1-year, 1-hour flow rate through the trash storage area, specify that maintenance should be triggered when 25% of the storage volume is consumed, and must be conducted prior to 50% storage capacity consumption to remain in compliance.** **• For "off-line" systems that route peak flows around the storage area, maintenance should be triggered by a 50% consumption of storage capacity and must be conducted prior to 100% storage volume consumption to remain in compliance.** **• Inspection observation of 25% screen area occlusion should trigger maintenance for all systems, and all systems should be maintained prior to 50% screen blockage to remain in compliance** **• Compliance with the permit should be based on documentation of the proper operational condition of controls. Areas draining to systems that are inadequately maintained should be considered out of compliance from the time of last documented acceptable condition.**	Off-line trash capture systems store trash where it cannot be resuspended and released when the screen clogs or during extreme flow events. As such, maintenance of these systems when half full is adequate. On-line trash capture systems send peak flows through the trash storage area and can resuspend and wash trash downstream when the screen clogs or during peak flows. To minimize this risk, more frequent maintenance is necessary. Since full capture systems must be maintained in order to be effective, areas draining to inadequately maintained full capture systems should be considered to be non-compliant with the trash removal provisions of the permit.
C.10.b.i.b	Add a requirement that before and after maintenance photos be collected and provided upon request of the Regional Board	Photos provide an easy and fast means of spot checking the condition of full capture systems for the Regional Board. Photo histories should also be valuable to the public works staff who are establishing proper inspection intervals. Los Angeles County includes before and after photos for all of their trash capture system maintenance events.
C.10.b.ii.b	Check reference in first sentence	No such section in the permit
C.10.b.ii.b	Add a receiving water monitoring based assessment of effectiveness of "other trash management actions", or add storm drain system inspection to the visual assessment actions.	Site trash loading rates are not the same as discharge rates. This permit should be regulating discharge rates, not site generation rates. If trash is blown by wind or transported by runoff or pushed by street sweeping equipment into the drain system, it will not be observable on site. Preferably add a requirement to assess trash discharge from the MS4, or at a minimum assessing trash accumulation in inlets and other MS4 infrastructure to help avoid scenarios where sites are observed to be clean because the trash has entered the MS4.

Section	Proposed Change or Comment	Justification
C.10.d, C.10.b.iv	Credits offered should be phased out over time.	A 20% total trash reduction credit is very generous. Source control efforts should reduce the operation and maintenance burden on full capture systems and require a greater ongoing burden to demonstrate effectiveness. This may be enough incentive to reduce trash loading. Cleanup from the shoreline and stream banks does not prevent discharges from the MS4 system. It simply cleans up trash that has already been discharged. It is also not likely to be a complete cleanup as discharged trash can be transported to the bay and/or come to rest in waterbodies in non-shoreline areas.
C.10.f.v.b	Change the penalty for not meeting compliance deadlines from triggering submittal of a report, to requiring installation of full capture systems in the watershed at an accelerated pace to bring the permittee into compliance. If this accelerated schedule is not met, enforcement actions should be initiated including issuance of a notice of violation for noncompliance.	The current penalty for non-compliance does not provide much incentive for a permittee to come into compliance.

CUPERTINO

PUBLIC WORKS DEPARTMENT

CITY HALL
10300 TORRE AVENUE- CUPERTINO, CA 95014-3266
(408) 777-3354- FAX (408) 777-3333

July 10, 2015

Mr. Bruce Wolfe
Executive Officer
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

Subject: Comments from the City of Cupertino on the Municipal Regional Permit (MRP) Tentative Order- May 11, 2015

Dear Mr. Wolfe:

Thank you for the opportunity to submit comments on the Regional Water Board's Revised Municipal Regional Permit (MRP or Permit) Tentative Order dated May 11, 2015. The City of Cupertino's key concerns and issues are summarized in this letter.

General – Agree with SCVURPPP comments and requested revisions – Cupertino #1 – SKM

Most importantly, the City strongly agrees with the letter and requested revisions to the Tentative Order submitted by the Santa Clara Valley Urban Runoff Pollution Prevention Program (7/10/15).

General – Flexibility allowed in MRP 1.0 has resulted in > 70% trash load reduction – Cupertino #2 - SKM

Progress toward Improved Water Quality

As of June 30, 2014, the City of Cupertino had achieved a little more than 70% trash load reduction by adopting a variety of initiatives and reduction measures which built, cost effectively, on unique opportunities in our community. We very much appreciate the flexibility allowed the Permittees to choose the best methods to achieve these load reductions, seeing that the characteristics and opportunities vary widely by municipality and agency. The Cupertino City Council favored adopting an anti-litter ordinance in 2013 a long with its single use bag ban, which requires business property owners to maintain trash free premises to the perimeter of their property including adjacent sidewalks. Staff was then allocated to provide for commensurate enforcement to ensure compliance. The City installed 107 trash full capture devices in high and medium trash generation areas, about twice as many as were required for Cupertino under MRP 1.0. To address litter that does not enter receiving waters from the City's drainage system (MS4), staff began conducting monthly cleanups at our hot spot (also a graffiti site) on Water District property at Stevens Creek. These cleanups have recently been included in local college curriculum by a professor to give his environmental science classes a hands-on watershed stewardship experience.

Trash Reduction Programs–

To maintain and grow Cupertino's success with its trash load reduction programs we request the following revisions to Provision C.10:

C.10.b.iv. – Cupertino #3 - SKM

- Source Controls- The most important actions that can be taken by Permittees are those that eliminate the generation of litter prone items in perpetuity. The data support that ordinances and product bans are working to eliminate problematic and pervasive trash before it enters the streets, the MS4 and the creeks. However, we were disappointed to find that the "maximum" allowed credit indicated via the evaluation of FY 13-14 Annual Reports had been reduced in the Tentative Order to roughly one-third

of that credit (i.e., it was 14%, and is now 5%). Therefore, the City requests, as have environmental NGOs that have partnered with municipalities to achieve these measures, that the maximum reduction value for all source control actions be increased to allow for additional innovative actions and appropriate value for those actions already in place. Supporting evidence would be required to claim reductions associated with each source control.

C.10.a.iii. – Cupertino #4 - SKM

- Trash Generation Area Management (Private Drainage Areas) -The City of Cupertino requests the removal of the requirement for "screening" all Green Infrastructure treatment facilities that are installed and maintained consistent with provision C.3 and that they be deemed equivalent to full capture systems. These facilities were designed consistent with the new and redevelopment requirements and perform at a level similar to typical trash full capture systems. These systems have been designed to prevent flooding and effectively remove pollutants from stormwater. However, the T.O. currently requires Permittees to install a screen (5mm) to the overflow pipes of all Green Infrastructure facilities before these devices can be considered full capture systems. Screening the overflow pipes would be out of the scope of the municipality's authority, as nearly all treatment facilities are privately owned and maintained. Additionally, adding screens to existing facilities would have unknown effects on the performance of these systems and would likely increase flooding.

C.10.b.i.a. – Cupertino #5 - SKM

- Maintenance (of Full Capture Systems) - We request that the TO be revised to allow Permittees to develop, implement and report on Permittee-specific maintenance programs of full capture devices to ensure a frequency that meets full capture criteria. As noted by the City's Public Works Director, Timm Borden, when he provided testimony for the Public Hearing on July 8th, the City of Cupertino has a maintenance plan that has been developed and verified by experienced staff maintenance technicians working with the devices to be effective and efficient. Yet, the TO requires prescriptive maintenance of small trash full capture devices based on the trash generation level of the surrounding area. This is inconsistent with Permittee experience and knowledge. Maintenance is currently site specific and is required at greater frequency where there is more vegetative material (85% of the debris captured by full capture devices). Implementing maintenance programs that are tailored to the specific device needs is the only way to ensure their effectiveness. Additionally, the cost savings from more flexibility may be transferred to the installation of additional full capture devices. We request that the T.O. allow for municipalities to continue successful and cost efficient maintenance programs.

C.3.j.i. – Cupertino #6 - SKM

Green Infrastructure (C.3) – Green Infrastructure implementation will be one of the most challenging requirements of MRP 2.0. Without careful planning, optimum opportunities may be squandered or missed. More time should be spent on developing a very cohesive plan among all the Co-Permittees. We could share commonalities among our 76 agencies so that, as we put together very specific goals that have long lives, we do it in the right direction the first time. We request that the T.O. be revised to allow two years to complete and obtain governing body approval of the GI framework; the entire permit term to complete the GI Plan and elimination the 2-year deadline to complete prioritization and

- Source Controls- The most important actions that can be taken by Permittees are those that eliminate the generation of litter prone items in perpetuity. The data support that ordinances and product bans are working to eliminate problematic and pervasive trash before it enters the streets, the MS4 and the creeks. However, we were disappointed to find that the "maximum" allowed credit indicated via the evaluation of

FY 13-14 Annual Reports had been reduced in the Tentative Order to roughly one-third of that credit (i.e., it was 14%, and is now 5%). Therefore, the City requests, as have environmental NGOs that have partnered with municipalities to achieve these measures, that the maximum reduction value for all source control actions be increased to allow for additional innovative actions and appropriate value for those actions already in place. Supporting evidence would be required to claim reductions associated with each source control.

- Trash Generation Area Management (Private Drainage Areas) -The City of Cupertino requests the removal of the requirement for "screening" all Green Infrastructure treatment facilities that are installed and maintained consistent with provision C.3 and that they be deemed equivalent to full capture systems. These facilities were designed consistent with the new and redevelopment requirements and perform at a level similar to typical trash full capture systems. These systems have been designed to prevent flooding and effectively remove pollutants from stormwater. However, the T.O. currently requires Permittees to install a screen (5mm) to the overflow pipes of all Green Infrastructure facilities before these devices can be considered full capture systems. Screening the overflow pipes would be out of the scope of the municipality's authority, as nearly all treatment facilities are privately owned and maintained. Additionally, adding screens to existing facilities would have unknown effects on the performance of these systems and would likely increase flooding.
- Maintenance (of Full Capture Systems) - We request that the TO be revised to allow Permittees to develop, implement and report on Permittee-specific maintenance programs of full capture devices to ensure a frequency that meets full capture criteria. As noted by the *City's* Public Works Director, Timm Borden, when he provided testimony for the Public Hearing on July 8th, the City of Cupertino has a maintenance plan that has been developed and verified by experienced staff maintenance technicians working with the devices to be effective and efficient. Yet, the TO requires prescriptive maintenance of small trash full capture devices based on the trash generation level of the surrounding area. This is inconsistent with Permittee experience and knowledge. Maintenance is currently site specific and is required at greater frequ ency where there is more vegetative material (85% of the debris captured by full capture devices). Implementing maintenance programs that are tailored to the specific device needs is the only way to ensure their effectiveness. Additionally, the cost savings from more flexibility may be transferred to the installation of additional full capture devices We request that the T.O. allow for municipalities to continue successfu l and cost efficient maintenance programs.

Green Infrastructure (C.3) – Green Infrastructure implementation will be one of the most challenging requirements of MRP 2.0. Without careful planning, optimum opportunities may be squandered or missed. More time should be spent on developing a very cohesive plan among all the Co-Permittees. We could share com monalities among our 76 agencies so that, as we put together very specific goals that have long lives, we do it in the right direction the first time. We request that the T.O. be revised to allow two years to complete and obtain governing body approval of the GI framework; the entire permit term to complete the Gl Plan and elimination the 2-year deadline to complete prioritization and

mapping. Implementation should begin after the GI Plan is completed. Efforts during the MRP 2.0 term should focus on development of long-term opportunistic implementation of green infrastructure projects where feasible and where funding is available.

C.12. and C.11. – Cupertino #7 - SKM

PCB and Mercury Control Programs- Finally and most importantly, with regard to PCB Controls, the City strongly suggests that the Tentative Order be revised so that compliance is based on a "control program" approach designed to achieve a Numeric Action Level, rather than compliance based on a load reduction number for PCBs. We also request that compliance be based on effective goals and implementation rather than on enforceable targets.

We appreciate your consideration of these comments and look forwad to your response.

Very truly yours,

l!:ielly c- O

Public Works Environmental Programs Manager

cc: Tom Mumley and Dale Bowyer, RWQCB

CITY OF DALY CITY

Department of Water and Wastewater Resources
153 Lake Merced Boulevard
Daly City, CA 94015
(650) 991-8200
Fax (650) 991-8220

Patrick Sweetland, Director

July 8, 2015

Mr. Bruce Wolfe
Executive Officer
San Francisco Bay Regional Water
Quality Control Board
1515 Clay Street, Ste. 1400
Oakland, CA 94612

Subject: MRP 2.0 TENTATNE ORDER

The City of Daly City appreciates the opportunity to comment on the Tentative Order for the reissued NPDES Municipal Regional Permit (MRP 2.0) released by the San Francisco Bay Regional Water Quality Control Board. Daly City recognizes and wishes to extend its compliments and appreciation to Regional Board staff under the direction of Dr. Tom Murnley for their efforts in bringing forward and working with agency staff. This collaboration is expected to continue long into the future.

General – Importance of flexible, practical and cost effective requireements – Daly City #1 – SKM

Daly City's comments reflect the importance of developing permit requirements that are flexible, practical and cost effective in meeting the challenges of water quality protection in our local creeks and San Francisco Bay. Our intent in providing these comments is to contribute toward a continued constructive dialog that will result in additional permit revisions that provide a clear and feasible pathway for Daly City and all other permittees to attain compliance. Our letter focuses on our highest priority areas of local concerns, Provision C.3 New Development and Redevelopment; C.lO Trash Load Reduction and C.ll/12 Mercury and PCB Controls.

General – Concur/support and incorporate by reference SMCWPPP's comments – Daly City #2 – SKM

For detailed comments on other sections ofthe permit, please refer to the comment letter submitted by the San Mateo Countywide Pollution Prevention Program (SMCWPPP) which Daly City's concurs and supports.

General – Concur/support public agency speakers and program consultants comments at June 10 Board workshop – Daly City #3 – SKM

In addition, Daly City has reviewed the transcript from the June 10, 2015 Regional Board MRP 2.0 Workshop and concurs with the public agency speakers and program consultants' comments toward improving upon the Tentative Order. Daly City's comments are as follows:

C.3 New Development and Redevelopment

C.3.b.i. – Daly City #4 – SKM

The provision within C.3.b to require previously approved local projects that have not yet begun construction before MRP 2.0 takes effect to then comply with provisions C.3.e and C.3.d on LID Treatment and sizing requirements is exceptionally problematic. Besides putting project developers into untenable double jeopardy, it risks local agencies into permit non-compliance. At issue is whether local agencies have legal authority to compel approved projects into compliance after the fact, and whether such action is advisable. When reviewing this provision with our City Attorney, it is acknowledged that

the approval of a final map or parcel map does not in itself confer a vested right to develop. There is no vested right to develop until actual building or other permits for identifiable buildings have been issued. However, Regional Board staff should review Government Code Section 66474.2 which states that the approval or conditional approval of a vesting tentative map shall confer a vested right to proceed with development in substantial compliance with the ordinances, policies, and standards **in effect** at the time the vesting tentative map is approved or conditionally approved. Regional Board staff should also

review Government Code Section 66498.1 which states the approval of a vesting tentative map expressly confers a vested right to proceed with a development in substantial compliance with the ordinances, policies, and standards in effect the time the application is deemed complete. Daly City would argue it would be more appropriate to focus resource compliance on projects that come before our planning process after MRP 2.0 adoption.

C.3.j.i. – Daly City #5 – SKM

One of the most challenging portions of C.3 pertains to C.3.j.1 requiring permittees to develop a Green Infrastructure (GI) Plan. Current language stipulates such a plan be developed and approved by local governing bodies within one year ofMRP 2.0 adoption. This timeframe is exceptionally short in what all parties recognize as being an exceptionally complex and time-intensive process requiring considerable interdepartmental coordination and resource allocation among staff. Daly City understands the GI Plan must include mechanisms to prioritize and map potential GI project areas; maps and lists generated by this mechanism, for implementation within 2, 7 and 12 years of the Permit effective date; targets for amounts of retrofitted impervious surface within 2, 7, 12, 27 and 52 years; tracking and mapping of installed GI systems; streetscape design and construction details and standards; a list of updates and modifications to existing related Permittee planning documents; and reporting on all of the above elements. Permittees must also prepare and submit annually a list of planned and potential GI projects, based on a review of capital improvement projects, and a summary of how each project will include GI to the Maximum Extent Practicable (MEP) or why it was impracticable to implement Gl.

It is Daly City's considered opinion the timeframe as set forth is unrealistic. It would be appropriate to amend this requirement for the entire term of the permit to complete the GI Plan as now envisioned.

C.10 Trash Load Reduction

C.10.a.i. – Daly City #6 – SKM

The proposed 70% load reduction by 2017 as now set forth, let alone the "no adverse effect" date of 2022 is increasingly challenging. While Daly City understands current 40% compliance evaluations by Regional Board staff are preliminary and are being re-evaluated, it would be appropriate to extend the 70% load reduction schedule at least to 2018. In this way, a clear and feasible means toward achieving trash load reductions can be understood, implemented, and compliance attained. Other, more specific C.10 comments submitted by the SMCWPPP are endorsed and not expanded upon in this letter.

C.11. & C.12. – Daly City #7 – SKM

C.11 Mercury Controls/C.12 PCBs Controls

Provisions C.11a-c Mercury Controls in the Tentative Order generally parallel C.12.a-c PCBs Controls so our comments cover both. Generally, any time a numeric TMDL approach is applied to a stormwater permit, Daly City takes pause to consider the potential ramifications. Numeric permit limitations, regardless of the source, have no place in a stormwater permit which is premised upon application of Best Management Practices. Daly City objects to the TMDL approach as now proposed. PCBs and Mercury are legacy pollutants. Public comments by Jon Konnan of EOA at the June 10 Regional Board Workshop were highly instructive on this issue. PCBs are widely dispersed into soils and sediments. Efforts within the Bay Area have identified a small number of "hot spots" which are under separate clean up orders from other agencies including the Regional Board, EPA and DTSC. Mostly, these sites are generally out of the control of local agencies. Now, local agencies must contend with a Tentative Order which is highly uncertain yet places agencies at considerable risk should numeric limits not be achieved. The issue ofPCBs and Mercury is much larger in scope than MRP 2.0 and the compliance pathway expected by Regional Board staff is less than clear.

C.12.f. – Daly City #8 – SKM

The load reductions sought should at the very least be incorporated into a Best Management Practice when suspect buildings are demolished.

The extent ofPCBs in caulking or weatherproofing is unknown. Equally unknown is when such buildings would be demolished. At the very least, a Best Management Practices approach could serve as an equivalent method to bridge how such legacy pollutants can be addressed to serve water quality concerns.

I trust you will find these comments helpful toward continued refinements on the Tentative Order toward the development of a meaningful and achievable MRP 2.0.

Sincerely,

Patrick Sweetland, Director
Department of Water and Wastewater Resources

LlS-058

cc: Matt Fabry, Coordinator
SMCWPP
555 County Center, 5th floor
Redwood City, CA 94063

July 7, 2015

Bruce Wolfe, Executive Officer
California Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay Street
Oakland, CA 94612

Via email to: mrp.reissuance@waterboards.ca.gov

Subject: Town of Danville opposition to the Tentative Order Reissuing the Municipal Regional Stormwater Permit (MRP 2.0)

Dear Mr. Wolfe and Members of the Board:

Thank you for the opportunity to comment on the Tentative Order Reissuing the Municipal Regional Stormwater Permit (MRP 2.0). The Town of Danville continues to support the Water Board's objectives of reducing stormwater pollution and protecting our local creeks, the delta and San Francisco Bay.

General – Danville #1 – STL

For the past two years, representatives from Contra Costa municipalities, along with a consortium of Bay Area agencies and BASMAA, have been engaged in an ongoing dialogue with your staff regarding: experience gained and lessons learned from the current MRP; how to apply that experience toward maximizing the effectiveness of MRP 2.0, and ensuring that the requirements contained in MRP 2.0 provide for a clear path to compliance.

This process generated many new ideas and approaches that build upon experience gained and identify how to expand upon and enhance our stormwater pollution prevention efforts. It also advocated consolidating or eliminating "less beneficial tasks" in the permit, extending implementation dates, reducing reporting, and adjusting ongoing tasks to reduce effort while maintaining effectiveness in protecting water quality.

This approach acknowledges the reality that new or additional funding sources required to implement the new and expanded requirements contained in MRP 2.0 have yet to be identified; and, advocates allocating limited resources in ways that would focus upon, and maximize effectiveness of the major new and expanded mandates.

Despite the extensive effort, few of these ideas were carried forward into MRP 2.0 Therefore, the Town of Danville opposes MRP 2.0 as it is currently drafted; and asks that your Board consider the following comments, and direct Water Board staff to work with permittees to revise the Tentative Order.

C.3. and C.12. – Danville #2 – STL

Major New and Expanded Mandates Should Be Offset by Eliminating Less Beneficial Tasks

The draft Tentative Order includes a new mandate to develop Green Infrastructure Plans. This coordinated, multi-year effort represents a significant paradigm shift toward developing comprehensive long range plans that will significantly reduce the amounts of urban runoff pollutants, including the pollutants of concern, flowing into receiving waters. It will also require significant investment on the part of all permittees.

In addition, the draft Tentative Order would require our Town of Danville to do the following:

C.3. – Danville #3 – STL

- Assess each planned infrastructure project and add Green Infrastructure features where feasible;

C.12. – Danville #4 – STL

- Plan and implement a program to manage PCB-containing materials in commercial and industrial structures constructed or remodeled between 1950 and 1980 at the time those structures are demolished;

C.10. – Danville #5 – STL

- Demonstrate trash load reductions of 70% from 2009levels- up from the current 40% requirement-by installing full trash capture devices or implementing equivalent trash control measures and evaluating their effectiveness through visual surveys; and

C.10. – Danville #6 – STL

- Require private property owners in high-trash and moderate-trash areas to install full trash capture devices or implement equivalent measures.

These major new mandates will require a significant, sustained effort to implement, absent any new or additional funding source.

C.10. – Danville #7 – STL

The attached table summarizes adjustments that have been presented to Water Board staff that would improve program efficiencies or eliminate certain less beneficial tasks. Comprehensive information and rationale has been presented to support these requests. Inclusion of these changes in the MRP 2.0 will allow permittees to focus and apply our

limited resources to the major new and expanded mandates, in order to achieve the greatest positive impact.

We request that your staff review the attached table and work with permittee representatives to make most or all of the recommended adjustments to "less beneficial tasks." Specifically:

C.3.h.ii.(6)(b) – Danville #8 – STL

- Section C.3.h.ii(6)(b) - Eliminate this provision because it is overly prescriptive and restrictive. *Cities need more flexibility in determining how many* C.3. *facilities will be inspected each year as long as they meet the criteria of inspecting each site once in five years.*

C.10.a.iii. – Danville #9 – STL

- Section C.lO.a.iii. -Acknowledge that LID facilities meet/exceed Full Trash Capture requirements, then screens on the overflow of LID facilities are not necessary. *The design criteria utilized for LID facilities captures and treats 80% of the total annual runoff which already exceeds the design requirements for Full Trash Capture devices.*

General – Reporting – Danville #10 – STL

Additionally, reporting requirements should be significantly reduced. Currently too many staff resources are utilized to generate large amounts of detailed data that do not appear to be utilized by the RWQCB each year. Perhaps a working group can sit down with Board staff to provide a more productive reporting method.

C.12. – Danville #11 – STL

Permittees Must Have a Clear Path to Compliance

Considerable time and effort has been spent discussing how to reduce levels of pollutants of concern flowing into our waterways, particularly PCBs. Failure to achieve the reductions specified in MRP 2.0 could result in our City/Town/County being held in noncompliance. However, as drafted, MRP 2.0 provides no clear path for permittees to avoid noncompliance. Some examples include:

- The draft Tentative Order mandates achieving specified reductions in the total quantity of PCBs discharged from municipal storm drains. A major means of achieving these reductions is through removal of PCBs during building demolitions. However this fails to acknowledge that permittees have no control over timing of when properties redevelop. *We ask that development of a program to control PCBs during building demolitions, rather than applying controls to a specified number of buildings demolished, should represent compliance with this requirement.*

C.12. – Danville #12 – STL

- The Tentative Order includes (in the Fact Sheet) an incomplete method to achieve stipulated reduction credits for each building demolished with PCB controls, for each redeveloped site with new bioretention facilities, and for finding and abating concentrated sources of PCBs. Looking for hidden PCB sources is a good idea, but permittees can't guarantee that they will find them and be able to abate them. *We ask*

that development of a program to systematically identify; and review potential sources, and refer them to appropriate agencies for abatement, be the basis for credit toward compliance.

C.12. – Danville #13 – STL

- The draft Tentative Order allows only four (4) months after Permit adoption for permittees to submit a more complete „measurement and estimation methodology and rationale" for stipulating PCB reduction credits. *We ask that BASMAA's PCBs programs accounting methodology be finalized, incorporated into the permit, and then used to calculate PCBs load reductions during permittee annual reporting.*

C.12. – Danville #14 – STL

- Water Board staff has stated the threat of noncompliance is intended to strongly encourage permittees to find and abate hidden PCBs, and that Water Board staff would use "enforcement discretion" if and when permittees are unable to meet the mandated PCB load reductions. From a municipal government perspective, new financial and staffing commitments must be based on agreed upon goals and objectives, and have well-defined metrics for measuring progress. *We ask that the load reduction performance criteria not be the point of compliance, and that Water Board staff work with permittee representatives to revise the Draft Tentative Order so that it provides a clear and feasible pathway for permittees to attain compliance. Most factors that are key to meeting the load reduction performance criteria are uncertain and many are not within permittee control (e.g., extent of source properties that will be found, building demolition rates, and redevelopment rates), making achievement of compliance uncertain.*

The Town of Danville appreciates the efforts by your staff to develop permit requirements that are implementable and effective in improving surface water quality- a goal which we share. We look forward to resolution of the remaining issues and to implementing MRP 2.0.

Sincerely,
Mike Doyle
Mayor
Town of Danville

cc Town Council

Attachment

Requested Adjustments to Improve Efficiency in the Municipal Regional Permit, Including Elimination of "Less Beneficial Tasks"

	Provision	Task or Requirement	Requested Adjustments
C.2. – Danville #15 – STL	C.2.f.	Corporation Yard inspection requirements.	Eliminate this requirement, as it duplicates the requirements for inspections already included in the Stormwater Pollution Prevention Plans (SWPPPs) for these same facilities.
C.3.b.i. – Danville #16 – STL	C.3.b.i.	Eliminates grandfathering of Regulated Projects with vested tentative maps approved prior to advent of C.3 requirements	Allow municipalities flexibility to require these applicants to implement stormwater treatment requirements only to the extent not in conflict with state law and existing development agreements
C.3.b.ii.(4) – Danville #17 –	C.3.b.ii.(4)	Certain Roads Projects are Regulated Projects under Provision C.3	Delete this requirement as the intent is superseded by the Green Infrastructure requirements in Provision C.3.j.
C.3.b.ii.(1)(c) – Danville #18 – STL	C.3.b.ii.(1)(c)	Requires projects where 50% or more of existing impervious area is redeveloped to provide treatment for entire area.	Delete this requirement as the intent is superseded by the Green Infrastructure requirements in Provision C.3.j.
C.3.e.ii. – Danville #19 – STL	C.3.e.ii.	Special Projects-allowance to use non-LID treatment on smart growth development projects that meet specified location and gross density criteria.	To avoid a disincentive for including pedestrian amenities, allow public plazas to be omitted from calculation of project gross density.
C.3.e.v.(1) – Danville #20 – STL	C.3.e.v.(1)	Requires Permittees to track Special Projects that have been identified (application submitted) but not approved.	Delete this requirement, as the number of projects, and amount of impervious area, has proven to be small.
C.3.e.v.(2) – Danville #21 – STL	C.3.e.v.(2)	Requires Permittees to conduct and document an analysis of the feasibility of LID treatment for Special Projects.	Delete this requirement, as it creates considerable additional effort for applicants and Permittees without any expected water-quality benefit.
C.3.g.vii. – Danville #22 – STL	C.3.g.vii.	Requires Contra Costa municipalities (through CCCWP) to submit a technical report describing how Contra Costa will implement current Permit hydromodification management requirements.	Delete requirement to submit a technical report. CCCWP submitted a 2013 report on the results of a multi-year monitoring study that concluded current policies and criteria meet these requirements.
C.3.g.iv. – Danville #23 – STL	C.3.g.iv.	Allows Permittees to propose a different method for sizing hydromodification management facilities that is not biased against Low Impact Development, but requires a Permit amendment before using the method.	Delete requirement for a Permit amendment before the method is used. Note: the Fact Sheet accompanying the Tentative Order states that Water Board Executive Officer approval would be required, not a Permit amendment.

Provision	Task or Requirement	Requested Adjustments
C.3.h.ii.(6)(b)-(c) – Danville #24 – STL		
C.3.h.ii.(6)(b) and (c)	Requires Permittees to inspect 20% of Regulated Projects annually, as well as every project at least once every 5 years.	Delete the annual requirement to allow flexibility in scheduling inspections.
C.3.j.i.(1) – Danville #25 – STL		
C.3.j.i.(1)	Requires each Permittee to prepare and implement a Green Infrastructure Plan (framework forPian due in 12 months; Plan due in 2019)	Extend the time for submittal of the required framework to a minimum of 20 months.
C.4, C.5., & C.6. – Danville #26 – STL		
C.4, C.5, C.6	For inspections of businesses and construction and for response to illicit discharges, requires that corrective actions of "actual or potential non-stormwater discharges" be implemented before the next rain event, but no longer than 10 business days after potential or actual non-stormwater discharges are discovered.	Delete references that specify types of corrective actions and sites, timeframes for implementation, as these create a disincentive for identifying minor problems and create unproductive administrative work.
C.5.e.iii. – Danville #27 – STL		
C.5.e.iii.	Requires Permittees to report a list of mobile cleaners operating in their jurisdiction.	Delete, as this information is unavailable.
C.5.e.iii. – Danville #28 – STL		
C.5.e.iii.	Requires Permittees to report a list and summary of specific outreach events and education conducted to the different types of mobile businesses	Delete and clarify that requirements to inspect mobile businesses and abate discharges is covered by existing requirements elsewhere in Provisions C.4 and C.5.
C.7.a. – Danville #29 – STL		
C.7.a.	Permittees are required to mark and maintain "no dumping" markings on storm drain inlets.	Move this task to Provision C.2.
C.7.b. – Danville #30 – STL		
C.7.b.	Requires Permittees to participate in or contribute to "advertising" campaigns on specified subjects and assess results.	Change "advertising" to "outreach" to make explicit that a variety of methods, including social media, may be used. Delete references to specific subjects. Allow more flexibility.
C.9.c. – Danville #31 – STL		
C.9.c.	Requires Permittees to observe pesticide applications by their contractors.	Delete requirement.
C.10.a.i.a. – Danville #32 – STL		

C.10.a.i.a.	Requires Permittees to achieve a 70% load reduction by July 1, 2017	Extend this compliance date to 2018.

C.10.a.ii.b. – Danville #33 – STL

C.10.a.ii.b.	Requires Permittees to ensure private properties plumbed directly to municipal storm drains are equipped with full trash capture devices or to verify "low" trash generation rate. Requires Permittees to investigate and map these properties.	Delete the mapping requirement and integrate inspections and enforcement into Provision C.4 (Commercial and Industrial Inspections).

Provision	Task or Requirement	Requested Adjustments
C.10.b.1.a. – Danville #34 – STL		
C.10.b.1.a.	Specifies maintenance frequencies for full trash capture devices based on trash generation rates.	Set minimum frequency of 1x/year for all devices, to be adjusted based on maintenance experience. Required maintenance frequency is determined mostly by amount of leaf litter and type of device.
C.10.b.1.c. – Danville #35 – STL		
C.1O.b.1.c.	Requires Permittees to certify that full trash capture systems are maintained to meet standard.	State that systems are maintained, and maintenance program is designed to meet standard.
C.10.b.iv. – Danville #36 – STL		
C.10.b.iv.	Allows a credit of up to 5% toward trash reduction requirement for source control actions such as product bans.	Increase maximum to 20% to fully credit existing product bans and to create incentive for future source control actions.
C.10.e.i. – Danville #37 – STL		
C.10.e.i.	Creates a formula for crediting trash collected during additional creek and shoreline cleanups toward trash reduction requirement-at a 1:10 ratio, with a 5% maximum credit.	Make the ratio 1:3 and increase maximum credit to 10%.
C.10.e. – Danville #38 – STL		
C.10.e.	Credits on-land cleanups and litter reduction only if visual assessments show a categorical change (e.g., from "very high" to "high" trash)	Allow interim credit for demonstrated actions intended to achieve categorical change.
C.10.a.iii. – Danville #39 – STL		
C.10.a.iii.	Requires bioretention facilities to be equipped with a screen to qualify as full-trash-capture facilities.	Specify that these facilities qualify as full trash capture. Screens could cause flooding.
C.10.b.1.a. – Danville #40 – STL		
C.10.b.1.a.	Requires observations of creeks and shorelines to determine whether trash control actions have prevented trash from discharging to receiving waters.	Restate purpose of observations, as it is not possible to determine that trash originated from storm drains.
C.10.e.ii. – Danville #41 – STL		
C.10.e.ii.	Provides 1:10 ratio up to 10% maximum credit for actions to reduce direct discharge of trash (e.g. dumping, encampments).	Increase ratio to 1:3, with no maximum, as in some locations this is the predominant source of trash.
C.10.f.ii. – Danville #42 – STL		
C.10.f.ii.	Produce an updated trash generation map each year:	Tie updated maps to compliance dates (for 70% and 100%).

CITY OF
DUBLIN

100 Civic Plaza
Dublin, California 94568
Phone: (925} 833-6650
Fax: (925} 833-6651

June 29, 2015

Transmitted via email: mep.reissuance@waterboards.ca.gov

Subject: City of Dublin Comments – MRP 2.0

Dear Dr. Mumley:

By email dated May 11, 2015, the tentative order for the SF Bay Regional Municipal Regional Stormwater Permit (MRP) was released. Notice was given that the deadline for receipt of written comments on the Draft MRP is 5:00 pm on Friday, July 10, 2015.

In response to the Water Board notice, I am filing the attached written comments on behalf of the City of Dublin. Thank you for the opportunity to file these comments. We appreciate the time that you and your staff have taken to meet with the permittees in an attempt to reach agreement on the next phase of the MRP.

The attached table outlines the City of Dublin's concerns with the draft tentative order.

Do not hesitate to contact me with any questions at 925-833-6630.

Sincerely,

Andrew Russell
Assistant Public Works Director/City Engineer

Attachments: Table of Specific Comments

City Council
(925) 833-6650
City Manager
(925) 833-6650
Community Development
(925) 833-6610
Economic Development
(925) 833-6650
Finance/Admin Services
(925) 833-6640
Fire Prevention
(925) 833-6606
Human Resources
(925) 833-6605
Parks & Community Services
(925) 556-4500
Police
(925) 833-6670
Public Works/Engineering
(925) 833-6630

Dublin
All-America City
2011

www.dublin.ca.gov

	Provision	Issue	Suggested Revision
C.3.e.v. – Dublin #1 – STL	C.3.e.v: Reporting on Special Projects	The purpose of the Special Projects provisions, per the language in the permit, is to incentivize projects that are beneficial at a watershed scale. Requiring Special Projects to first demonstrate LID infeasibility does little to incentivize these projects. Furthermore, requiring Special Projects to demonstrate infeasibility for off-site LID treatment is vague and unnecessarily difficult.	Remove the Special Projects reporting requirements.
C.3.b.ii.(1)(a)(iv) – Dublin #2 – STL	C.3.b.ii(1}(a)(iv): Stand-alone parking lots	As written, it is unclear if a project which otherwise would not qualify as a Regulated Project includes a parking lot that replaces/creates more than 5,000 SF of parking lot, is just the parking lot surface created/replaced subject to C.3.c and C.3.d requirements or would the entire project site would be considered subject to C.3.c and C.3.d requirements.	Revise to specify that only the impervious surface area(s) of uncovered parking lot created and/or replaced are subject to the requirements of Provisions C.3.c and C.3.d.
C.3.e.ii(3)(a)(iv), C.3.e.ii(4)(a)(iv), and C.3.e.ii(5)(e)(i)b – Dublin #3 –	C.3.e.ii(3)(a)(iv) and C.3.e.ii(4)(a)(iv) C.3.e.ii(S)(e)(i)b: Incidental parking	Special projects should be allowed to also include minimal incidental surface parking for commercial uses if the project is a mixed use project (i.e. residential with ground floor retail).	Revise to allow incidental surface parking for commercial uses (applicable for mixed-use projects- residential with ground floor retail).
C.3.j. – Dublin #4 – STL	C.3.j: Green Infrastructure	There is a lack of direction and information for development of a Green Infrastructure Plan. There are no guidelines or reference plans that we can use to develop our own plan. We are concerned that we will expend our limited resources on the development of such a plan, which will then be rejected by Water Board Staff as being inadequate.	Provide a single plan example that meets Board's requirements. Or give specific direction on the development of the Green Infrastructure Plan. It is a common practice that the scientific research is conducted in advance of a regulation to ensure the efficacy of the law. In this case there is no such scientific backup.
C.3.j. – Dublin #5 – STL	C.3.j: Green Infrastructure	We are not convinced of the water quality benefits that will be achieved from the Green Infrastructure Plan and the construction of Green Infrastructure projects. The cost/benefits ratio for some Green Infrastructure projects will be too high to justify project planning, development and construction.	Provide scientifically sound information (data) that demonstrates the water quality benefits that will be achieved from the Green Infrastructure projects.

C.3.j. – Dublin #6 – STL	C.3.j: Green Infrastructure	Green Infrastructure projects particularly those incorporated into roadway projects will often times be unable to meet the C.3.d sizing criteria. Greater flexibility is needed.	Revise to allow Permittees to propose an approach to dealing with project constraints at the Permittee or countywide program level. Add alternative compliance and allow the treatment facility to be located outside the watershed.
C.3.j.i.(1). – Dublin #7 – STL	C.3.j.i(1): Green Infrastructure Framework	The time to develop a framework for a Green Infrastructure Plan is infeasible. Twelve months is not enough time to develop the framework and have it approved by the City Council. While the permit does allow for a City Manager to approve the Green Infrastructure framework such a plan would have to be approved by the City Council given the cost implications of the plan.	Revise to give more permittees more time to develop a framework.
C.5.e. – Dublin #8 – STL	C.5.e: Mobile Businesses	The provision contains very specific requirements that may turn out not to be the most effective approach.	A proposed alternative approach that allows greater flexibility while still ensuring that the problem will be addressed will be submitted through BASMAA.
C.6.ii.e.ii(2)(b) – Dublin #9 – STL	C.6.ii.e.ii(2)(b): Inspection of hillside projects	Not all Permittees have such hillside development areas defined. The new requirement raises several questions concerns: • Is this the pre-existing slope or the post-construction slope? • Is this the average slope across the entire project site? What is the definition of "slope" as it applies to this requirement? How is "slope" measured? • If any portion (regardless of the net amount) of the site exceeds the minimum slope threshold does this trigger the requirement for monthly inspections of the entire site (i.e. say 100 SF of a 0.9 acre site is considered "hillside")?	The default definition for "hillside" development should be revisited and further discussed prior to implementation. Also, a minimum disturbed surface should be included in the definition of "project."
C.7.a.i. & C.7.a.ii. – Dublin #10 – STL	C.7.a.i & C.7.a.ii: Storm Drain Signage	These provisions would be more appropriate in other sections of the Permit.	Move the marking of municipally maintained inlets requirement to Provision C.2 and move the marking of privately maintained inlets to Provision C.3.

C.9.a.iii.(2) – Dublin #11 – STL	C.9.a.iii(2): Reporting on IPM strategies	Alternative language preferred.	Revise from "Permittees shall provide a description of two IPM actions implemented in the reporting year" to [11]Permittees shall provide a description of any new IPM actions implemented in the reporting year."
C.9.d. – Dublin #12 – STL	C.9.d: Interface with County Agricultural Commissioners	The language in the current permit is adequate. Not all permittees will need to communicate with the county agricultural commissioners.	Revise to state that permittees shall describe any communications that they have with the County agricultural commissioners.
C.10.a.ii.b. – Dublin #13 – STL	C.10.a.ii.b: Parcels plumbed directly to storm drain system	The requirement for cities to map all land greater than 5,000 square feet that are plumbed directly to the storm drain system by 2018 is burdensome and will not provide any water quality benefits.	Remove this requirement from the permit.
C.10.b.ii.b(ii) – Dublin #14 – STL	C.10.b.ii.b(ii): Non-FTC Assessment	Draft permit requires visual assessment covering 10% of jurisdictions management areas. This is an unduly burdensome requirement, especially for large jurisdictions, and no rationale for this high rate of assessment is provided.	Decrease the minimum required area.
C.10.b.iii.iv. – Dublin #15 – STL	C.10.b.iii.iv: Source Control	Source control is an important strategy in reducing trash. A five percent load reduction for all source control actions is not adequate and does not incentivize cities to implement source control measures.	Increase the percent load reduction for source control to 15%. In addition, cities should be able to claim a percent load reduction for outreach efforts. Outreach efforts are the only strategy that changes people's behavior.
C.10.b.iii.v. – Dublin #16 – STL	C.10.b.iii.v: Receiving Water Observations	The amount of trash within receiving waters is not necessarily an indication that the on-land control measures are effective or ineffective. Trash within the receiving water is extremely variable and can include trash that doesn't originate from the MS4, such as trash from homeless encampments & wind-blown trash.	We recommend that this requirement be removed or delayed until a regional study has been done that provides a quantifiable link between the trash within the MS4 & receiving waters.
C.11.c. – Dublin #17 – STL	C.11.c: Plan and Implement Green Infrastructure to reduce PCB	Provision C.11.c incorrectly assumes that mercury reduction concerns can drive the decisions of where initial Green Infrastructure projects are constructed.	Remove C.11.c from the Permit. The Green Infrastructure plans should not be tied to TMDLs.

C.12.a.ii(4) – Dublin #18 – STL	C.12.a.ii(4): PCB load default approach	The approach to assign specific load fractions for PCBs based on county population in each city is flawed. The City of Dublin has a relatively high population; however, we have very little old industrial and old urban areas. The majority of development in Dublin occurred in the past 10-15 years. Using the default approach would result in Dublin's requirement being high despite the fact that we have almost no sources of PCBs.	Remove the default approach from the permit.
C.12.c. – Dublin #19 – STL	C.12.c: Plan and Implement Green Infrastructure to reduce PCB Loads	Provision C.12.c incorrectly assumes that PCB reduction concerns can drive the decisions of where initial Green Infrastructure projects are constructed.	Remove C.12.c from the Permit. The Green Infrastructure plans should not be tied to TMDLs.
C.12.f. – Dublin #20 – STL	C.12.f: Manage PCB- Containing Materials and Wastes during Building Demolition and Renovation Activities	A framework for managing PCB containing materials and wastes during building demolition activities is something that should be developed at the state level, similar to asbestos abatement or lead based paint.	Remove this requirement from the permit.
General – Reporting – Dublin #21 – STL	Annual Reporting	Annual Reporting is extremely time consuming now and would be even more onerous if we were required to report on two separate permits.	Regardless of when the MRP 2.0 is adopted, the City requests that the annual reporting requirement not be split between two different permits.

July 10, 2015

VIA E-MAIL
mrp.reissuance@waterboards.ca.gov

Bruce Wolfe, Executive Officer
California Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay St.
Oakland, CA 94612

Re: Comments on Proposed Revised Municipal Stormwater Permit

Dear Mr. Wolfe and Members of the Board:

The East Bay Leadership Council thanks you for the opportunity to comment on the proposed revisions to the Regional Municipal Stormwater NPDES Permit. The East Bay Leadership Council an organization composed of business, government, labor and non-profit leaders in the Greater East Bay region. Its mission is to promote economic vitality and quality of life for all who live and work in the East Bay, the Bay Area, and the State of California.

The East Bay Leadership Council supports the goal of reducing stormwater pollution reflected in the Tentative Order. In addition, the East Bay Leadership Council wishes to commend the Regional Water Board on its recognition of the importance of integrating efforts. As the Tentative Order states, it is critical to:

> "integrate water quality and watershed protection with water supply, flood control, habitat protection, groundwater recharge, and other sustainable development principles and policies …."

C.3 – East Bay Leadership Council - # 1 - REL

(Provision C.3.a.8). Being in the midst of one of the most severe droughts on record, it is an opportune time to recognize that stormwater capture and re-use may be one piece of a multi-faceted response to the increasingly complex challenge of providing sufficient water supply for the population and the environment so that the dual goals of economic vitality and quality of life remain viable and compatible.

The East Bay Leadership Council is concerned that, while the proposed permit identifies the importance of integrating efforts, it then forecloses the flexibility that will be necessary to actually accomplish that goal. For example, the time frame allowed for completing offsite and Regional Projects, just three years, is unrealistic. Provision 3.C.3.e.i.(3). Requiring that significant offsite and Regional Projects be completed within three years of completion of the Regulated Project does not recognize the realities of designing and constructing such a project. Even with the opportunity to extend that period to five years at the discretion of the Executive Officer, the option does not give any significant project a chance to get off the ground. Any significant Regional Project intended to incorporate water supply, flood control, and groundwater recharge goals with stormwater treatment will likely take far more than three to five years to compete, given the necessary design and environmental review processes, including the always-present potential for lengthy legal challenges. If funding sources for these projects, i.e., *in lieu* fees, may only be available for three years, the stability of funding necessary to even initiate a truly significant Regional Project will never materialize.

The East Bay Leadership Council urges the Regional Board to extend the time-frame for completing offsite and Regional Projects receiving *in lieu* fees to at least ten years with the opportunity to extend that period up to fifteen years at the discretion of the Executive Officer, and longer with Regional Board concurrence.

Thank you again for this opportunity to share our collective thoughts with you.

Very truly yours,

Kristin Connelly
President and CEO

City of East Palo Alto
Office of the City Manager

July 9, 2015

Mr. Bruce Wolfe
Executive Officer
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

Subject: SMCWPPP Comments on the Tentative Order for the Reissued NPDES Stormwater Municipal Regional Permit

Dear Mr. Wolfe:

The City of East Palo Alto appreciates this opportunity to comment on the Tentative Order for the reissued NPDES stormwater municipal regional permit ("MRP 2.0") released by the San Francisco Bay Regional Water Quality Control Board (Regional Water Board) staff on May 11, 2015. These comments reflect the importance of developing permit requirements that protect water quality in our local creeks and San Francisco Bay through a collaborative, sustainable and resource efficient effort.

Please note that, like San Mateo County Water Pollution Prevention Program (SMCWPPP), the City's highest priority areas of concern are Provisions C.3 (New Development and Redevelopment, especially the Green Infrastructure provision), C.10 (Trash Load Reduction), and C.11/12 (Mercury and PCBs Controls).

General – Agree with SMCWPPP's comments – East Palo Alto #1 – SKM

While the City is in agreement with SMCWPP's concerns, listed herein are those issues which are of particular importance to the City of East Palo Alto.

General – Concur with Matt Fabry's oral testimony in that all permit provisions should be ordered by prioritization – East Palo Alto #2 – SKM

The City of East Palo Alto is currently understaffed to ensure full NPDES compliance and the existing funding structure is inadequate to address the required actions. More clear direction should be provided to lead Permitees toward successful implementation of targeted objectives. As Matt Fabry of the Bay Area Stormwater Agencies Association (BASMAA) indicated in oral testimony at the Water Board hearing on July 8, 2015, all permit provisions should be ordered by prioritization, to ensure all Permittees shall focus efforts on those most critical areas that represent the highest likelihood of providing the most substantial water quality improvement. Other provisions, while important, require more time to develop mature plans that can be used to target these pollutants for successful outcomes, efficiently, not trial-and-error approaches.

General – C.10. should be Board's highest priority – East Palo Alto #3 – SKM

It is the City's position that Trash Load Reduction should be the Water Board's highest priority.

Addressing the reduction of trash has been studied and the City better understands the capital improvement needs for fully capturing these constituents; East Palo Alto is likely to meet these stringent reduction goals.

C.11 & C.12. – East Palo Alto #4 - SKM

In its planning infancy due to the widespread distribution and implications of Green Infrastructure needs, PCB and Mercury provisions-as indicated in the TO-create significant hurdles that will require more extensive planning with an unknown horizon; it is unlikely significant pollutant load reduction can be accomplished during the MRP 2.0 permit term. Due to this steep planning and funding development curve, it is the City's position that the Water Board should include an extended planning schedule with modest or no pollutant load reduction requirements, but rather "goals," which, if voluntarily met, can count toward overall pollutant load reduction in future permit terms, in a similar manner to the trash load reduction credits, previously provided to encourage and reward product bans.

General – East Palo unlikely to achieve full compliance with MRP in current Tentative Order – East Palo Alto #5 – SKM

It is the City's assertion that in its present form, due to the substantial requirements included in the text of the Tentative Order, the City of East Palo Alto is unlikely to achieve full compliance to key provisions. Following SMCWPPP's notice as a template, the areas where the City of East Palo Alto is most likely to fall short of being able to meet provisions are included below.

C.3 - NEW DEVELOPMENT AND REDEVELOPMENT

C.3.b.i. – East Palo Alto #6 – SKM

C.3.b.i - Regulated Projects

Provision C.3.b requires that any Regulated Project that was approved before any C.3 requirements were in effect (i.e., does not have a stormwater control plan) and has not begun construction before MRP 2.0 takes effect must comply with provisions C.3.c and C.3.d (LID treatment and sizing requirements).

- Issue: The City of East Palo Alto does not have the legal authority to impose new requirements on projects with approved entitlements or development agreements, and therefore will face non-compliance with this requirement. Furthermore, it may be difficult for a project to change its site design and layout to accommodate LID treatment measures required by C.3.c and C.3.d.

  Requested Revision: Add language, "to the extent legally feasible."

C.3.h.ii.(7) – East Palo Alto #7 – SKM

C.3.h- Operation and Maintenance of Stormwater Treatment Systems

- Issue: C.3.h.ii.(7) contains requirements for O&M Enforcement Response Plans. Section (c) requires that corrective actions for identified O&M problems with pervious pavement, treatment be implemented within 30 days of identification, and if more than 30 days are required, a rationale must be recorded in the City's inspection tracking database. The timeframe proposed is unreasonably burdensome and will require that this matter is prioritized higher than items with a more substantial opportunity to reduce pollution potential.

The process of contacting and educating the property owner, allowing the property owner to arrange for maintenance work to be completed, and following up with a re-inspection typically takes more than 30 days. It is the assertion ofthe City of East Palo Alto that allowing the work to be done within 30 days, with a 90 day maximum- at the Permittee's discretion to determine- would be a reasonable change that allows for more collaboration between the Permittee and the property owner.

Requested Revision: Allow a maximum of 90 days for completion of permanent corrective

actions.

C.3.h.ii.(6)(b) – East Palo Alto #8 – SKM

- Issue: Changes were made to allow Permittee to track inspections by the number of sites instead of numbers of treatment/HM facilities, which was an improvement, but inspection of at least 20% ofthe total number of Regulated Projects is required each year. The City of East Palo Alto would like more flexibility around that number while still meeting the requirement of inspection of each site at least once every five years. The City of East Palo Alto has a small number of sites, which results in inspecting each site more frequently than every five years. Each inspection requires a fee of $274, resulting in a higher financial burden for our local sites simply because there are so few stormwater treatment facilities in the City.

  Requested Revision: Change language to require inspection of "approximately 20%" of sites per year.

C.3.j. – East Palo Alto #9 – SKM

C.3.j - Green Infrastructure Planning and Implementation

This provision will be one of the most challenging portions of C.3 for the City of East Palo Alto to implement as it has has substantial unknown financial implications and it also bears a significant level of uncertainty towards gaining full compliance. The level of effort and resources required to implement Provision C.3 is likely to be dramatically higher than implementing MRP 1.0 due to the new Green Infrastructure (GI) requirements.

C.3.j.i., C.11, C.12 – East Palo Alto #10 – SKM

Green Infrastructure Plan. The Gl Plan must include: mechanism to prioritize and map potential Gl project areas; maps and lists generated by this mechanism, for implementation within 2, 7, and 12 years of the Permit effective date; targets for amounts of retrofitted impervious surface within 2, 7, 12, 27, and 52 years; tracking and mapping of installed Gl systems; streetscape design and construction details and standards; a list of updates and modifications to existing related Permittee planning documents; and reporting on all of the above elements. Permittees must also prepare and submit annually a list of planned and potential Gl projects, based on a review of capital improvement projects, and a summary of how each project will include Gl to the Maximum Extent Practicable (MEP) or why it was impracticable to implement Gl.

- Issue: The language in Provision C.3.j needs to be more consistent with the expectations in Provisions C.lland C.12 for achieving PCB and mercury load reductions with Gl. Due to existing research for compliance in C.lland C.12, it is clear that there are a lot of unknowns in terms of cost/benefit for Gl. Furthermore, C.3.j only refers to public retrofits, while private redevelopment represents a substantial opportunity area for the City of East Palo Alto in obtaining full compliance due to "hot spots" of old industrial areas, whose redevelopment is likely to result in a high likelihood of mercury/PCB contamination being in a redevelopment zone that is likely to be redeveloped in the future.

  Requested Revision: Make C.3.j more explicit in that private development, redevelopment, as well as public projects, will count toward meeting PCB and mercury load reductions. Eliminate implementation requirements for year 2. Allow that constructed public Gl projects within the permit term are not required for compliance with Gl pollutant load reductions, but could be counted on a voluntary basis for future credits.

C.3.j.i.(1) – East Palo Alto #11 – SKM

- Issue: Developing a comprehensive GI Plan will take time and significant staff and financial resources, and the timeframes in the Tentative Order for completion of the Plan are unrealistic for the City of East Palo Alto to be in full compliance. The City plans capital improvements over a ten year horizon, during which time, the City seeks funding strategies and applies for grants to implement planned improvements and obtain all required permits.

  The framework for the GI Plan indicates that this plan should be developed and approved by local governing bodies or city/county managers within one year of the Permit effective date. This is a very short timeframe given the effort required to collaborate in the development of the GI with all City departments, educate upper level staff and elected officials, prepare the framework, conduct resource planning, obtain grant opportunities to integrate with planned projects, and accommodate lead times for bringing the framework to governing bodies.

  Since the GI Plan must be completed and submitted with the 2019 Annual Report (three and one-half years from the expected Permit effective date) coupled with the fact that completing a GI Plan will be a complex and time-intensive process that will require a great deal of municipal interdepartmental coordination and resources, this timeframe is too short. Due to the haste within which the GI Plan is proposed to be completed, it is likely to result in an inadequate plan based on insufficient information and will likely result in more time delays and unnecessary amendments. Prioritization and mapping of potential and planned projects may not be able to be completed within two years of the Permit effective date.

  Requested Revision: Provide additional time to complete and obtain governing body approval of the GI framework by extending the deadline to the required reporting date of February 1, 2018. Provide the entire permit term to complete the GI Plan. Eliminate the two-year deadline to complete prioritization, mapping, and begin implementation of planned/potential projects (before the GI Plan is completed), and include these efforts in the GI Plan development period.

C.3.j.i.(1) – East Palo Alto #12 – SKM

Develop guiding principles municipalities can use to voluntarily implement Green Infrastructure into projects as they are being built, so that design standards can be further tested and cost implications can be better understood prior to full implementation, with the option of using the voluntary infrastructure for future permit term.

Requested Revision: Efforts during the MRP 2.0 term should focus on development of long-term GI Plans and opportunistic implementation of GI projects where feasible and where funding is available in the near term.

C.4 - INDUSTRIAL AND COMMERCIAL SITE CONTROLS

C.4.c.ii.(3) – East Palo Alto #13 – SKM

C.4.c- Enforcement Response Plans (ERPs)

- Issue: Provision C.4.c.ii.{3)- Timely Correction of Potential and Actual Non-stormwater Discharges now "requires" correction for all potential and actual discharges before the next rain event but no longer than 10 business days. The current permit requires that all violations are corrected in a timely manner with the "goal" for correcting violations before the next rain event but no longer than 10 business days, and if >10 business days is required, the inspector must record

rationale in database or tabular system. Adding the word "requires" does not allow for flexibility needed by inspector issuing an enforcement action. If adopted as written, this provision would require sites with minor issues during the dry season (i.e., verbal warnings) to have a follow-up inspection within 10 business days to confirm corrective actions have been implemented.

This provision has real potential to eliminate collaboration between City inspectors and property owners/managers to obtain full, long term beneficial compliance. In some cases, significant retrofits and standard operating procedures are necessary, resulting in a significant amount of time to obtain compliance, with the end result being no water quality impairment.

Requested Revision: We request that the requirement as worded in the current permit be maintained in the Tentative Order

C.IO- TRASH LOAD REDUCTION

C.10.a.ii. – East Palo Alto #14 – SKM

C.IO.a.ii.b- Trash Generation Area Management (Private Drainage Areas)

- Issue: Provision C.10.a.ii.b (Trash Generation Area Management) requires Permittees to map and assess ALL private drainages 5,000 ft^2 and greater, determine the level of trash present in these areas, and ensure that no further actions are needed. Mapping will require a significant undertaking and access to private property that will result in minimal water quality benefit and the cost will be both financially challenging as well as a privacy invasion for those majority private property owners with clean properties.

  Ensuring that private drainages are at a "low" trash generation level does not require mapping. Areas can be identified by modifying existing City inspection programs already in place by targeting locations that indicate, at the street, that there is clear trash "potential" impact.

  Requested Revision: We request that the mapping requirement be removed from this provision. As an alternative, Permittees should be required to: 1) identify high priority areas that generate moderate, high or very high levels of trash and are plumbed directly to their storm drain systems, and 2) cause these areas to be managed to a level equivalent to the performance of a full capture system or to a low trash generation level.

C.10.b.iv. – East Palo Alto #15 – SKM

C.IO.b.iv- Source Controls

The most important actions that can be taken by Permittees are those that eliminate the generation of litter prone items in perpetuity. The City of East Palo Alto has adopted an ordinance focused on eliminating single use plastic bags from entering San Francisquito Creek and the Bay, due to the widespread prevalence when conducting creek assessments. While the County took the lead, these actions took significant political support, public resources and were

done in partnership with environmental NGOs and the business community.

- Issue: The maximum of 5% reduction for all source control actions is arbitrary and inconsistent with our current knowledge of the percentage of trash in stormwater associated with specific litter-prone items associated with source control actions. Requested Revision: We request that the TO be revised to increase the maximum reduction value for all source control actions combined to reflect supporting data by volume, of the litter contribution of each of these products. Supporting evidence would be required to claim reductions associated with source controls.

C.10.e.i. – East Palo Alto #16 – SKM

C.lO.e.i- Optional Trash Load Reduction Offset Opportunities- Creek and Shoreline Cleanups

Creek and shoreline cleanups are important actions that promote community involvement, create awareness of trash issues, and improve water quality. These actions have water quality value, are supported by the community and environmental NGOs, and should be accounted for accordingly in the load reduction accounting method.

- Issue: While the City of East Palo Alto appreciates the inclusion of load reduction benefits associated with creek and shoreline cleanups, the 5% maximum offset for these important actions is too small and inconsistent with the environmental benefit for what we find in San Francisquito Creek as much of the material represents a substantial potential water quality impairment from illegal dumping of hazardous chemicals, trash, and homeless encampments.
- Requested Revision: We request that the TO be revised to:
  - Provide or confirm legal means that enable Permittees to access private property in creeks to remove litter, debris, homeless encampments, and illegal dumping from the waterways, with transferability to volunteers;
  - Increase the maximum offset for creek and shoreline cleanups to at least 20%;
  - Reduce the ratio of trash removed to reduction value to 3:1; and,
  - Include illegal dumping and homeless encampments in waterways in this category.

C.10.e.ii. – East Palo Alto #17 – SKM

C.lO.e.i- Optional Trash Load Reduction Offset Opportunities – Direct Discharge Trash Controls

- Issue: When the City conducts litter cleanups, this includes abatement of homeless encampments, illegal dumping and litter, collectively.

  Requested Revision: We request that the TO be revised to:

  - Eliminate this provision and include the removal of this material collectively with Creek and Shoreline Cleanups.

C.11. – East Palo Alto #18 – SKM

C.11- MERCURY CONTROLS

Provisions C.11.a-c in the Tentative Order generally parallel C.12.a-c. Therefore, the below comments on those provisions for C.12 (PCBs Controls) also generally apply to C.11(Mercury Controls).

C.12. – General – East Palo Alto #19 – SKM

C.12 - PCBs CONTROLS

Extensive local property source identification programs led by the City of East Palo Alto have identified a small number of PCBs "hot spots". These hot spots are mostly associated with properties that are currently under Brownsfields or Superfund Site cleanup orders from the Regional Water Board, EPA, and DTSC, or are currently permitted by these agencies. These sites are generally outside of the control of the City of East Palo Alto due to ongoing remediation.

The City lacks control over a timeframe for redevelopment and demolition of existing buildings that may be PCB contributors; this creates a high level of uncertainty in the level of implementation that East Palo Alto can commit to during the next five year permit term. This provision assumes much more clarity of future development opportunities, which simply does not exist in the City of East Palo Alto, which has substantial infrastructure deficits preventing development (primarily drinking water and deficient storm drainage systems).

Provision C.12 ofthe Tentative Order uses a framework that is a hybrid oftwo approaches, requiring: 1} BMP implementation and 2) pollutant load reduction. The required BMPs are Green Infrastructure and managing PCBs-containing materials and wastes during building demolition activities. Currently, the City relies on Countywide programs and regional campaigns to ensure these types of waste are source separated. While the City could require, through updated policies, that applicants provide evidence of appropriate disposal of these materials, the City does not have the capacity to determine whether a particular building is a potential risk. The City would rely, most likely, on an outside agency such as San Mateo County lead abatement program to ensure proper disposal ofthis material.

These details require research and analysis to determine a streamlined approach that will not create substantial impact to demolition and removal of these buildings. The timeframe given is unlikely to be within reach for San Mateo County, which is already overburdened and understaffed.

C.12.a. – East Palo Alto #20 – SKM

- Issue: The schedule for the following reporting requirements in Provision C.12.a. is unrealistic.
    - Provision C.12.a.iii.(1)- February 1, 2018 report providing "a list of watersheds (or portions therein) where PCBs control measures are currently being implemented and those in which control measures will be implemented (C.12.a.ii.(1)) during the term of this permit as well as the monitoring data and other information used to select the watersheds."
    - Provision C.12.a.iii.(2)- 2018 Annual Report providing "the specific control measures (C.12.a.ii.(2)) that are currently being implemented and those that will be implemented in watersheds identified under C.12.a.iii.(1) and an implementation

schedule (C.12.a.ii.(3)) for these control measures. This report shall include: .... [scope, start dates, progress milestones, schedules, roles and responsibilities of Permittees, etc...]....".

Requested Revision: Extend the deadlines for the above reports to the 2020 Annual Report or at the end of the permit term, or after July 2022 when Trash load Reduction goals have been completed.

C.12.c. – East Palo Alto #21 – SKM

C.12.c.Plan and Implement Green Infrastructure to Reduce PCBs Loads

Provision C.l2.c of the Tentative Order requires Permittees to implement Green Infrastructure projects during the term of the permit to achieve PCBs load reductions of 120 g/year over the final three years of the permit term. Additionally, Permittees are required to prepare a reasonable assurance analysis to demonstrate quantitatively that PCB load reductions of at least 3 kg/yr throughout the Permit area will be achieved by 2040 through implementation of Green Infrastructure plans required by Provision C.3.j.

- Issue:In East Palo Alto, quantifiable PCB load reductions will not be the driver for Gl implementation during the reissued permit term. The driver in East Palo Alto will be the development of demolition standards for buildings containing PCBs, the speed of private development or redevelopment, and integrating Gls into Capital Improvement Programs. The proposed criteria is unlikely to influence Gl implementation for most Permittees during the reissued permit term as most of these factors are not within a Permittees control during this timeframe.

  Requested Revision: Provision C.12.c should be deleted.

We look forward to continuing to work with you and your staff to resolve the issues described in this letter. Please contact Michelle Daher, Environmental Programs Management Analyst, (650) 853-3197 or mdaher@cityofepa.org, if you have any questions or would like to further discuss any of our comments.

Sincerely,

Carlos Martinez
City Manager

THE CITY OF
EL CERRITO
OFFICE OF THE CITY MANAGER

July 3, 2015

Bruce Wolfe, Executive Officer
California Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay St.
Oakland, CA 94612

Via email to: mrp.reissuance@waterboards.ca.gov

Subject: Opposition to the Tentative Order Reissuing the Municipal Regional Stormwater Permit (MRP 2.0)

Dear Mr. Wolfe and Members of the Board:

Thank you for the opportunity to comment on the Tentative Order Reissuing the Municipal Regional Stormwater Permit (MRP 2.0). The City of El Cerrito continues to support the Water Board's objectives of reducing stormwater pollution and protecting our local creeks, the delta and San Francisco Bay.

General – El Cerrito #1 – STL

For the past two years, representatives from Contra Costa municipalities, along with a consortium of Bay Area agencies and Bay Area Stormwater Management Agencies Association (BASMAA), have been engaged in an ongoing dialogue with your staff regarding: experience gained and lessons learned from the current MRP; how to apply that experience toward maximizing the effectiveness of MRP 2.0; and ensuring that the requirements contained in MRP 2.0 provide for a clear path to compliance.

This process generated many new ideas and approaches that build upon experience gained, and identified how to expand upon and enhance our stormwater pollution prevention efforts. It also advocated for consolidating or eliminating "less beneficial tasks" in the permit, extending implementation dates, reducing reporting, and adjusting ongoing tasks to reduce effort while maintaining effectiveness in protecting water quality.

This approach acknowledges the reality that new or additional funding sources required to implement the new and expanded requirements contained in MRP 2.0 have

yet to be identified, and advocates allocating limited resources in ways that would focus upon and maximize effectiveness of the major new and expanded mandates.

Despite the extensive effort, few of these ideas were carried forward into MRP 2.0. Therefore, the City of El Cerrito opposes MRP 2.0 as it is currently drafted, asks that your Board consider the following comments, and directs Water Board staff to work with permittees to revise the Tentative Order.

C.3. – El Cerrito #2 – STL

Major New and Expanded Mandates Should Be Offset by Eliminating Less Beneficial Tasks

The draft Tentative Order includes a new mandate to develop Green Infrastructure Plans. This coordinated, multi-year effort represents a significant paradigm shift toward developing comprehensive long range plans that will significantly reduce the amounts of urban runoff pollutants, including the pollutants of concern, flowing into receiving waters. It will also require significant investment on the part of all permittees.

In addition, the draft Tentative Order would require our City to do the following:

- Assess each planned infrastructure project and add Green Infrastructure features where feasible;

C.12. – El Cerrito #3 – STL

- Plan and implement a program to manage PCB-containing materials in commercial and industrial structures constructed or remodeled between 1950 and 1980 at the time those structures are demolished;

C.10. – El Cerrito #4 – STL

- Demonstrate trash load reductions of 70% from 2009 levels— up from the current 40% requirement—by installing full trash capture devices or implementing equivalent trash control measures and evaluating their effectiveness through visual surveys; and

C.10. – El Cerrito #5 – STL

- Require private property owners in high-trash and moderate-trash areas to install full trash capture devices or implement equivalent measures.

El Cerrito is also concerned with the challenge of generating the additional financial resources that would be required to meet the terms of many of the new provisions.

C.3.j. – El Cerrito #6 – STL

Also, of particular concern are the C.3.j Green Infrastructure requirements. These could significantly impact how transportation infrastructure is built and maintained over the next several decades. The burden of these requirements must be balanced with the multiple other demands for use of limited public right-of-way in the built environment.

C.3, C.11, and C.12. – El Cerrito #7 – STL

Additionally, it should be more explicit that private development and redevelopment projects receive credit for meeting the Pollutants of Concern (POC) load reductions.

C.3.j. – El Cerrito #8 – STL

Given the high cost of green infrastructure, transportation needs, and the inevitable underground conflicts with other utilities in the public right-of-way, efforts during the MRP 2.0 term should focus on planning and opportunistic implementation where feasible.

C.3.j. – El Cerrito #9 – STL

The proposed GI Framework schedule with development and approval within one year is exceedingly aggressive considering its complexity. Prioritization and mapping of potential projects would be a major resource intensive effort that may require more than two years.

C.3.j. – El Cerrito #10 – STL

The Early Implementation section does not provide a clear path to compliance. Because it affects long range planning it must be more defined and achievable in order to be realized. These major new mandates will require a significant, sustained effort to implement; however, absent any new or additional funding sources, most communities will be hard pressed to achieve compliance.

The attached table summarizes adjustments that have been presented to Water Board staff that would improve program efficiencies or eliminate certain less beneficial tasks. Comprehensive information and rationale has been presented to support these requests. Inclusion of these changes in the MRP 2.0 will allow permittees to focus and apply our limited resources to the major new and expanded mandates, in order to achieve the greatest positive impact.

All of the requested adjustments in the attached table would enable El Cerrito to more effectively use its limited resources to achieve the goals of the permit. In particular, the City would like to highlight the following:

C.2.f. – El Cerrito #11 – STL

- C.2.f. requiring additional Corporation Yard Inspections is duplicative of current requirements for inspections already included in the SWPPPs for these same

facilities. Redundancy of requirements will divert limited staff resources from implementing other more pressing clean water mandates.

C.3.b.i. – El Cerrito #12 – STL

- C.3.b.i may adversely affect much needed development projects that were in stasis during the economic downturn such as Eden Senior Affordable Housing, 1715 Elm Residential Development and Creekside Walk with the removal of the grandfathering clause.

C.9.c. – El Cerrito #13 – STL

- C.9.c - All applicators already receive IPM training and sign the City's IPM policy contractor agreement. Increased pesticide application observation is redundant and burdensome.

C.10.a.i.a. – El Cerrito #14 – STL

- C.10.a.i.a – Since the rejection by the Water Board of all of the Permittee's Short Term Trash Load Reduction Plans and the Water Board changes to allowable trash load reduction credits, additional time and resources are needed to implement accepted trash load reduction methods.

C.10.a.ii.b. – El Cerrito #15 – STL

- C.10.a.ii.b- A mapping requirement for private property lands plumbed to the MS4 is unduly resource intensive and should be eliminated. The City does not have an accurate inventory of storm drains on private lands. Rather, the same goals could be reached, and City resources would be more effectively used, by concentrating on the C.4 and C.5 provisions.

C.10.e.i. – El Cerrito #16 – STL

- C.10.e.i.- Our City is fortunate to have volunteer "Green Teams" that remove street litter quarterly in on-land clean-ups. These events should receive trash load reduction credit based on volume of collected trash.

C.12. – El Cerrito #17 – STL

Permittees Must Have a Clear Path to Compliance

Considerable time and effort has been spent discussing how to reduce levels of pollutants of concern flowing into our waterways, particularly PCBs. Failure to achieve the reductions specified in MRP 2.0 could result in our City being held in noncompliance and vulnerable to lawsuits. However, as drafted, MRP 2.0 provides no clear path for permittees to avoid noncompliance. Some examples include:

- The draft Tentative Order mandates achieving specified reductions in the total quantity of PCBs discharged from municipal storm drains. A major means of achieving

these reductions is through removal of PCBs during building demolitions. However this fails to acknowledge that permittees have no control over timing of when properties redevelop. ***We ask that development of a program to control PCBs during building demolitions, rather than applying controls to a specified number of buildings demolished, should represent compliance with this requirement.***

C.12. – El Cerrito #18 – STL

- The Tentative Order includes (in the Fact Sheet) an incomplete method to achieve stipulated reduction credits for each building demolished with PCB controls, for each redeveloped site with new bioretention facilities, and for finding and abating concentrated sources of PCBs. Looking for hidden PCB sources is a good idea, but permittees can't guarantee that they will find them and be able to abate them. ***We ask that development of a program to systematically identify and review potential sources, and refer them to appropriate agencies for abatement, be the basis for credit toward compliance.***

C.12. – El Cerrito #19 – STL

- The draft Tentative Order allows only four (4) months after Permit adoption for permittees to submit a more complete "measurement and estimation methodology and rationale" for stipulating PCB reduction credits. ***We ask that BASMAA's PCBs programs accounting methodology be finalized, incorporated into the permit, and then used to calculate PCBs load reductions during permittee annual reporting.***

C.12. – El Cerrito #20 – STL

- Water Board staff has stated the threat of noncompliance is intended to strongly encourage permittees to find and abate hidden PCBs, and that Water Board staff would use "enforcement discretion" if and when permittees are unable to meet the mandated PCB load reductions. From a municipal government perspective, new financial and staffing commitments must be based on agreed upon goals and objectives, and have well-defined metrics for measuring progress. ***We ask that the load reduction performance criteria not be the point of compliance, and that Water Board staff work with permittee representatives to revise the Draft Tentative Order so that it provides a clear and feasible pathway for permittees to attain compliance. Most factors that are key to meeting the load reduction performance criteria are uncertain and many are not within permittee control (e.g., extent of source properties that will be found, building demolition rates, and redevelopment rates), making achievement of compliance uncertain.***

The City of El Cerrito appreciates the efforts by your staff to develop permit requirements that are implementable and effective in improving surface water quality—a goal which we share. We look forward to resolution of the remaining issues and to implementing MRP 2.0.

Sincerely,

City of El Cerrito

Scott Hanin
City Manager

Attachment : Requested Adjustments to Improve Efficiency in the Municipal Regional Permit, Including Elimination of "Less Beneficial Tasks"

Requested Adjustments to Improve Efficiency in the Municipal Regional Permit, Including Elimination of "Less Beneficial Tasks"

	Provision	Task or Requirement	Requested Adjustments
C.2.f. – El Cerrito #21 – STL	C.2.f.	Corporation Yard inspection requirements.	Eliminate this requirement, as it duplicates the requirements for inspections already included in the Stormwater Pollution Prevention Plans (SWPPPs) for these same facilities.
C.3.b.i. – El Cerrito #22 – STL	C.3.b.i.	Eliminates grandfathering of Regulated Projects with vested tentative maps approved prior to advent of C.3 requirements	Allow municipalities flexibility to require these applicants to implement stormwater treatment requirements only to the extent not in conflict with state law and existing development agreements
C.3.b.ii.(4) – El Cerrito #23 – STL	C.3.b.ii.(4)	Certain Roads Projects are Regulated Projects under Provision C.3	Delete this requirement as the intent is superseded by the Green Infrastructure requirements in Provision C.3.j.
C.3.b.ii.(1)(c) – El Cerrito #24 –STL	C.3.b.ii.(1)(c)	Requires projects where 50% or more of existing impervious area is redeveloped to provide treatment for entire area.	Delete this requirement as the intent is superseded by the Green Infrastructure requirements in Provision C.3.j.
C.3.e.ii. – El Cerrito #25 – STL	C.3.e.ii.	Special Projects—allowance to use non-LID treatment on smart growth development projects that meet specified location and gross density criteria.	To avoid a disincentive for including pedestrian amenities, allow public plazas to be omitted from calculation of project gross density.
C.3.e.v.(1) – El Cerrito #26 – STL	C.3.e.v.(1)	Requires Permittees to track Special Projects that have been identified (application submitted) but not approved.	Delete this requirement, as the number of projects, and amount of impervious area, has proven to be small.
C.3.e.v.(2) – El Cerrito #27 – STL	C.3.e.v.(2)	Requires Permittees to conduct and document an analysis of the feasibility of LID treatment for Special Projects.	Delete this requirement, as it creates considerable additional effort for applicants and Permittees without any expected water-quality benefit.
C.3.g.vii. – El Cerrito #28 – STL	C.3.g.vii.	Requires Contra Costa municipalities (through CCCWP) to submit a technical report describing how Contra Costa will implement current Permit hydromodification management requirements.	Delete requirement to submit a technical report. CCCWP submitted a 2013 report on the results of a multi-year monitoring study that concluded current policies and criteria meet these requirements.
C.3.g.iv. – El Cerrito #29 – STL	C.3.g.iv.	Allows Permittees to propose a different method for sizing hydromodification management facilities that is not biased against Low Impact Development, but requires a Permit amendment before using the method.	Delete requirement for a Permit amendment before the method is used. Note: the Fact Sheet accompanying the Tentative Order states that Water Board Executive Officer approval would be required, not a Permit amendment.
C.3.h.ii.(6)(b)-(c) – El Cerrito #30 – STL	C.3.h.ii.(6)(b)	Requires Permittees to inspect 20% of Regulated	Delete the annual requirement to allow flexibility in scheduling

	Provision	Task or Requirement	Requested Adjustments
	and (c)	Projects annually, as well as every project at least once every 5 years.	inspections.
C.3.j.i.(1) – El Cerrito #31 – STL	C.3.j.i.(1)	Requires each Permittee to prepare and implement a Green Infrastructure Plan (framework for Plan due in 12 months; Plan due in 2019)	Extend the time for submittal of the required framework to a minimum of 20 months.
C.4, C.5, and C.6. – El Cerrito #32 – STL	C.4, C.5, C.6	For inspections of businesses and construction sites, and for response to illicit discharges, requires that corrective actions of "actual or potential non-stormwater discharges" be implemented before the next rain event, but no longer than 10 business days after potential or actual non-stormwater discharges are discovered.	Delete references that specify types of corrective actions and timeframes for implementation, as these create a disincentive for identifying minor problems and create unproductive administrative work.
C.5.e.iii. – El Cerrito #33 – STL	C.5.e.iii.	Requires Permittees to report a list of mobile cleaners operating in their jurisdiction.	Delete, as this information is unavailable.
C.5.e.iii. – El Cerrito #34 – STL	C.5.e.iii.	Requires Permittees to report a list and summary of specific outreach events and education conducted to the different types of mobile businesses	Delete and clarify that requirements to inspect mobile businesses and abate discharges is covered by existing requirements elsewhere in Provisions C.4 and C.5.
C.7.a. – El Cerrito #35 – STL	C.7.a.	Permittees are required to mark and maintain "no dumping" markings on storm drain inlets.	Move this task to Provision C.2.
C.7.b. – El Cerrito #36 – STL	C.7.b.	Requires Permittees to participate in or contribute to "advertising" campaigns on specified subjects and assess results.	Change "advertising" to "outreach" to make explicit that a variety of methods, including social media, may be used. Delete references to specific subjects. Allow more flexibility.
C.9.c. – El Cerrito #37 – STL	C.9.c.	Requires Permittees to observe pesticide applications by their contractors.	Delete requirement.
C.10.a.i.a. – El Cerrito #38 – STL	C.10.a.i.a.	Requires Permittees to achieve a 70% load reduction by July 1, 2017	Extend this compliance date to 2018.
C.10.a.ii.b. – El Cerrito #39 – STL	C.10.a.ii.b.	Requires Permittees to ensure private properties plumbed directly to municipal storm drains are equipped with full trash capture devices or to verify "low" trash generation rate. Requires Permittees to investigate and map these properties.	Delete the mapping requirement and integrate inspections and enforcement into Provision C.4 (Commercial and Industrial Inspections).
C.10.b.1.a. – El Cerrito #40 – STL	C.10.b.1.a.	Specifies maintenance frequencies for full trash capture devices based on trash generation rates.	Set minimum frequency of 1x/year for all devices, to be adjusted based on maintenance experience. Required maintenance frequency

	Provision	Task or Requirement	Requested Adjustments
			is determined mostly by amount of leaf litter and type of device.
C.10.b.1.c. – El Cerrito #41 – STL	C.10.b.1.c.	Requires Permittees to certify that full trash capture systems are maintained to meet standard.	State that systems are maintained, and maintenance program is designed to meet standard.
C.10.b.iv. – El Cerrito #42 – STL	C.10.b.iv.	Allows a credit of up to 5% toward trash reduction requirement for source control actions such as product bans.	Increase maximum to 20% to fully credit existing product bans and to create incentive for future source control actions.
C.10.e.i. – El Cerrito #43 – STL	C.10.e.i.	Creates a formula for crediting trash collected during additional creek and shoreline cleanups toward trash reduction requirement—at a 1:10 ratio, with a 5% maximum credit.	Make the ratio 1:3 and increase maximum credit to 10%.
C.10.e. – El Cerrito #44 – STL	C.10.e.	Credits on-land cleanups and litter reduction only if visual assessments show a categorical change (e.g., from “very high” to “high” trash)	Allow interim credit for demonstrated actions intended to achieve categorical change.
C.10.a.iii. – El Cerrito #45 – STL	C.10.a.iii.	Requires bioretention facilities to be equipped with a screen to qualify as full-trash-capture facilities.	Specify that these facilities qualify as full trash capture. Screens could cause flooding.
C.10.b.iv. – El Cerrito #46 – STL	C.10.b.iv.	Requires observations of creeks and shorelines to determine whether trash control actions have prevented trash from discharging to receiving waters.	Restate purpose of observations, as it is not possible to determine that trash originated from storm drains.
C.10.e.ii. – El Cerrito #47 – STL	C.10.e.ii.	Provides 1:10 ratio up to 10% maximum credit for actions to reduce direct discharge of trash (e.g. dumping, encampments).	Increase ratio to 1:3, with no maximum, as in some locations this is the predominant source of trash.
C.10.f.ii. – El Cerrito #47 – STL	C.10.f.ii.	Produce an updated trash generation map each year.	Tie updated maps to compliance dates (for 70% and 100%).

CITY OF
EMERYVILLE
INCORPOR
ATED 1
896

1333 PARK AVENUE
EMERYVILLE, CALIFORNIA
94608-3517

TEL: (510) 596-4330 FAX: (510)
596-4389

July 9, 2015

Thomas E. Mumley
Assistant Executive Officer
San Francisco Bay Regional Water Quality Control Board
Transmitted via email: mrp.reissuance@waterboards.ca.gov

Dr. Mumley,

Thank you for the opportunity to comment on the Municipal Regional Stormwater NPDES Permit
Tentative Order issued May 11, 2015.

The City of Emeryville has an aggressive and proactive program of stormwater pollution prevention, and would like to ensure that our extensive efforts on this program are spent on reducing or eliminating discharges rather than on unproven or administrative activities. To that end, we have the following comments on the Tentative Order issued on May 11, 2015.

C.10. – Emeryville #1 – STL

Our primary comment is about which BMPs are credited with preventing discharges, and at what rate. The City of Emeryville does on-land cleanups throughout the entire city seven hours a day, seven days a week, year-round. A crew averaging ten County furlough workers and one City employee cover nearly the entire one-square-mile city each day, picking up trash. Emeryville has only 19 miles of street, which means that on average, each worker walks about two miles of street each day picking up trash. Visual observations demonstrate that these frequent on-land cleanups are at least as effective as Full Trash Capture devices at preventing discharges into the storm drain system, and we request that the Board include this measure as equivalent to Full Trash Capture.

In addition to the request to have daily on-land cleanups recognized as an effective BMP, the City of Emeryville has the following comments on other sections of the Tentative Order:

Administrative Requirements

General - Reporting – Emeryville #2 – STL

The completion of the Annual Report is a very time-consuming activity; we in Emeryville estimate that up to 30% of the staff time we have for stormwater pollution prevention is spent on reporting rather than implementation, even before the proposed requirement for visual assessments is taken into account. We ask that reporting requirements be extensively streamlined to include the key information needed for program review. Data that are not reviewed by Water Board staff and data that are duplicative from one section of the report to another should be removed from the reporting requirement, thus allowing significantly more time for Permittees to work on actually reducing the pollutant load into receiving waters.

General - Reporting – Emeryville #3 – STL

The current reporting requirement, for a single permit in a reporting period, is already extremely burdensome. If Permittees need to also report on the new permit, with new requirements, metrics, and reporting responsibilities in the same reporting period, the time required to prepare the reports may realistically take more than half of staff's annual time available for the implementation of the program. Permittees should not be required to report on two permits in one reporting period. We recommend that the new permit have an implementation date of July 1, 2016 to avoid this problem. Alternatively, Permittees could be asked to report only on the permit that is in effect for the majority of the reporting period.

Comment [REL1]: This was cut off from the original letter. I added it to the general comment labeled letter and the general RTC Table.

C.3.j Green Infrastructure Planning and Implementation

C.3 – C.3.j Timelines too tight – Emeryville #101 – REL

The Green Infrastructure Planning section of the Tentative Order is very aggressive, and imposes planning processes and timelines on jurisdictions that do not necessarily match their existing planning structure. The requirement to plan right-of-way improvements over a 50-year period does not reflect the way this work is done or how it is driven at the local level. The program's many requirements, in a short timeframe, appear to require Permittees to add staff to handle this significant additional workload. There is, of course, no funding available for new staff at the local level. If the local agency were able to identity funding for new staff, the timeline it would take to appropriate the funds and recruit for the position would need to be accounted for In the timelines for meeting the newly imposed goals of the MRP.

C.3 – Inappropriate sizing criteria – Emeryville #102 – REL

Provision C.3 .j.1.g requires roadway projects to meet the C.3.d sizing requirements, As demonstrated through the Green Streets pilot projects already completed under the current permit, it is often impossible for roadway projects to achieve C.3.d sizing criteria due to constraints inherent in existing infrastructure design. In addition, the sections of this requirement that ask for "goals," "appropriate reductions," and "targets" for jurisdictions are too vague to be consistently and reliably interpreted by jurisdictions or overseen by the Water Board. The permit should spell out requirements; goals and targets should be removed from the Tentative Order in the interest of clarity for all concerned.

C.10 Trash Load Reduction

Our main request in C.10 is described above: the acknowledgement of the effectiveness of daily on-land cleanup as at least equivalent to Full Trash Capture.

C.10 – Mapping requirement too burdensome – Emeryville #103 – REL

The requirement to map the drainage of all private property down to 5,000 ft2 in certain trash generation areas would entail extensive staff time and effort, and there is no demonstrable benefit from this huge undertaking. The mapping requirement in C.10.a.ii.b should be eliminated.

C.12 PCB Controls

C.12 – No path to compliance – effectiveness uncertain – Emeryville #104 – REL

There is not a clear path to compliance for PCB load reductions; studies do not exist that can help Permittees reliably quantify the effectiveness of various proposed actions. Compliance with the permit should be based on actions that are known to be effective, that are measurable, and that are within the purview of the Permittees' jurisdictions.

C.12 – Demolition Program – no expertise in local agencies – Emeryville #105 – REL

Controlling PCBs in building demolitions should be the responsibility of state or regional agencies, as other potentiul emissions from building demolition, including asbestos and lead. Local agencies have neither the expertise nor the staff to take on a technical program such as PCB control. In addition, duplicating that effort among all regional jurisdictions is fiscally irresponsible.

C.12. – Emeryville #4 – STL

As currently written, there is no mechanism by which a Permittee can know its "share" of the regional PCB reduction requirement. The numeric load reduction requirements are premature in the face of so many unknowns regarding the quantity of PCBs in the environment and the effectiveness of various BMPs in preventing their discharge into receiving waters. Numeric load reduction targets should be removed in favor of the implementation of BMPs and continued research that will allow more quantification.

Once again, thank you for the opportunity to comment on the proposed permit. It should be noted that these comments are provided solely to assist the Water Board's consideration of and potential reaction to concepts or language it may, in its discretion, elect to advance relative to the reissuance of the Municipal Regional Permit for stormwater discharges. It is not intended and should not be misconstrued as an offer to take on, or volunteer for, any potential permit requirement that represents a new program or higher level of service relative to the MRP or its predecessor permits.

Sincerely,

Nancy Humphrey
Environmental Programs Supervisor
nhumphrey@emeryville.org
(510) 596-3728

CITY OF Fremont

Community Services Department | Environmental Services
P.O. Box 5006, Fremont, CA 94537-5006
www.fremont.gov

July 10, 2015

Via Email (*MRP.reissuance@waterboards.ca.gov)*

Dr. Tom Mumley, Assistant Executive Officer
California Regional Water Quality Control Board,
San Francisco Bay Region
1515 Clay Street, Suite 1400
Oakland, CA 94612

SUBJECT: Municipal Regional Stormwater Permit Tentative Order Comments

Dear Dr. Mumley,

Consistent with your email dated May 11, 2015, the City of Fremont is transmitting these written comments on the 2.0 Municipal Regional Permit (MRP) Tentative Order via email to *MRP.reissuance@waterboards.ca.gov*. The City appreciates the time Water Board staff members have spent meeting with Permittee representatives in order to reach agreement on the complex next phase of the permit. The City acknowledges that some desirable changes have been incorporated into the draft tentative order, however Fremont staff believe it is essential that additional changes be made to the Tentative Order in order to eliminate requirements that are either costly without providing a commensurate improvement in water quality, or that are impractical or infeasible to implement.

Our comments are provided below.

C.12. – Fremont #1 – STL

1. **Provision C.12 Polychlorinated Biphenyls (PCBs) Control** - The City is concerned about the feasibility of meeting the PCB load reduction performance criteria with best management practices (BMPs) and believes the default allocation scheme is unreasonable. Furthermore, we agree with the detailed comments submitted by the Alameda Countywide Clean Water Program on this provision but will not repeat them in this letter.

C.10.a. – Fremont #2 – STL

2. **Provision C.10.a Trash Reduction Requirements Schedule** - Caltrans and the Permittees have similar permit requirements to reduce trash loads but with different target reduction dates. Since many of the highest trash problem area are along Caltrans roadways, in order to meet the trash reduction targets, it will be essential that Permittees partner and coordinate with Caltrans for the installation and maintenance of full trash capture devices. Caltrans has until 2025 to meet the reduction targets specified under its stormwater permit. We request aligning the schedule for Permittees to meet the 70% and 100% trash reduction targets with the Caltrans permit dates in order to facilitate the coordination that must occur between the agencies.

Recreation
510 494-4300 / 510 494-4753 fax

Environmental Services
510 494-4570 / 510 494-4571 fax

Landscape Architecture
510 494-4700 / 510 494-4721 fax

Parks and Urban Forestry
510 979-5700 / 510 979-5708 fax

C.10.a.ii.b. – Fremont #3 – STL

3. **Provision C.10.a.ii.b Trash Capture Devices on Private Lands** - Expanding trash capture requirements to retrofit private lands will be extremely burdensome on local agencies. Fremont estimates it will be over $100,000 per year to first create the storm drain maps and then allocate the staffing resources needed to ensure compliance. It is also unclear whether local agencies have the legal authority to compel private land owners to retrofit properties with trash-capture devices, and demonstrate an ongoing acceptable level of inspection and maintenance, in the absence of seeking a development permit from the City or having to abate a nuisance. Furthermore, recent field reconnaissance efforts have revealed a wide disparity of drain shape, size, and depth. Staff has concluded that some of the drains may support a trash-capture device while others would not.

C.3. and C.10.a.ii.b. – Fremont #4 – STL

As an alternative to the proposed language, the City is requesting that expanding trash-capture devices to private lands be included only a going-forward basis as part of C.3 new development and redevelopment requirements. Such an approach for regulated projects would allow a structured method of updating private storm drain maps, increasing trash-capture coverage, and reducing the chance of flooding and trash bypass due to private infrastructure constraints. We feel that this strategy would achieve the desired effect without causing an unreasonable staffing and fiscal burden on Permittees.

C.10.b.i.a.(i-iv) – Fremont #5 – STL

4. **C.10.b.i.a. (i-iv) Maintenance Interval Requirements** - Fremont has had a positive experience with the approximately 500+ devices currently in the ground and plans to install another 1,000 devices. Thus far there have been no instances of flooding, evidence of trash bypass, or device damage. We attribute this good experience to two factors:

    - Careful device siting: we make sure that the drain inlet vault size is adequate for a trash-capture device and that the MS4 conveyances within the drain inlet are appropriate for effective and sustainable trash capture.

    - A supplemental inspection and maintenance program for inlets with full-trash capture devices that supplements routine drain inlet maintenance and includes:
        - pre-rainy season inspection to determine the amount of material (organic matter+ trash) in each trash-capture device drain inlet vault

        - priority cleaning for trash-capture device inlet vaults containing 10% or more of materials.

We believe that using the approach of targeted maintenance (pre-rainy season inspection and priority cleaning) is a more effective way to prevent plugging, flooding, or bypassing of trash rather than prescribing a maintenance schedule based upon trash generation area. We ask that the Board remove the prescribed maintenance frequency requirements and leave it to the discretion of the Permittees based upon field assessments and experience.

C.10.b.iv. – Fremont #6 – STL

5. **C.10.b.iv Source Control Trash Reduction Credit** - The proposed five-percent cap on source control measures does not fully recognize the benefit of removing certain products, e.g., plastic bags and polystyrene food service ware, from the trash cycle. In the City's view, reduced access to litter-producing products equates to a reduced amount of trash that can enter the MS4. Jurisdictions are required to enact and enforce source controls and should thereby receive a commensurate amount of trash reduction credit. We are requesting the Water Board to remove the five percent trash reduction credit cap on source control measures.

C.3.j.i. – Fremont #7 – STL

6. **C.3.J.i Green Infrastructure Program Plan Development** - Developing the Green Infrastructure framework will require significant time, resources and coordination among multiple City departments as well as outside agencies. It will not be feasible to develop this plan within 12 months of permit adoption. The City is requesting the deadline be extended to 24 months from Permit adoption.

The City believes it is essential that the Revised Tentative Order be further revised as outlined in this comment letter in order to effectively implement the expanded requirements and achieve improved water quality with available resources. Thank you for considering these comments.

Sincerely,

Kathy Cote
Environmental Services Manager

reissuance, mrp@Waterboards

From: Karen Ginsberg <kareng1123@gmail.com>
Sent: Wednesday, July 08, 2015 5:23 PM
To: reissuance, mrp@Waterboards
Subject: a request for action
Attachments: To.docx

NOTE – ALL THE COMMENTS ARE EXACTLY THE SAME AS SAVE THE BAY MEMBERS' COMMENTS - JBO

To: The Regional Water Quality Control Board

Regional Water Quality Control Board members and staff:

Please adopt a stronger Municipal Stormwater Permit for 76 cities and counties in the Bay Area. As a resident of the Bay Area, I urge you to create stronger policy and regulation that will get our region to zero trash by 2022.

The Municipal Stormwater Permit should be rewritten to include enforceable mandates, create measurable targets, and produce clear data to accurately track trash in the Bay. Please include these specific, crucial changes in the revised permit:

- Get serious about getting to ZERO TRASH. If cities or counties fail to achieve a 70% trash reduction by 2017 and a 100% reduction by 2022, they should be required to install additional full-trash-capture devices in storm drains so that trash is intercepted before flowing into creeks.
- Track trash over time. Require cities to collect trash data from our urban areas no less than twice per quarter. Data collected from the same locations multiple times is necessary to understand how trash conditions change over time and whether cities are effectively moving toward zero trash.
- The proof is in the water. Support the addition of monitoring trash conditions in waterways, in addition to monitoring trash in our urban areas.
- Keep focusing on "hot spots." Continue to require reporting of the dominant types of trash at trash hot spots. Bay Area cities banned plastic bags and Styrofoam food-ware because cleanup data showed that these were some of the most common types of litter. The more information we have about the trash polluting our creeks, the more effectively our cities can prioritize solutions.
- Prioritize stopping trash at the source. Eliminating single-use, throwaway materials is a growing trend that we should support. We urge you to incentivize source control efforts by offering more than 5% trash load reduction credit to cities that submit strong implementation plans.

Please make the most of this opportunity to learn from the challenges of the past four years and to create a permit that produces clear data to accurately track trash in the Bay, placing cities on a stronger path to achieving zero trash. My community expects to see zero trash in stormwater by 2022. Please, stick to the timeline and issue a permit that ensures city compliance.

Thank you for considering my comments.

Thank you for taking action,

Karen Beroldo

C10 – Require cities that do not reduce trash by 70% by 2017 and 100% by 2022 to install additional full-trash-capture devices so that trash is intercepted before flowing into creeks – K.Beroldo #1 – JBO

C10 – Require cities to collect trash data from urban areas no less than twice per quarter. This is necessary to understand the change in trash conditions and compliance over time. – K.Beroldo #2 – JBO

C10 – Is supportive of the addition of monitoring trash in waterways in addition to monitoring urban areas – K.Beroldo #3 – JBO

C10 – Continue to require reporting of the dominant types of trash at hot spots; this helps prioritize solutions – K.Beroldo #4 – JBO

C10 – Prioritize stopping trash at the source, such as supporting the elimination of single-use materials, by offering greater than 50% load reduction credit to cities that submit strong implementation plans – K.Beroldo #5 - JBO

CITY OF
HAYWARD
HEART OF THE BAY

July 7, 2015

Mr. Bruce Wolfe
Executive Officer
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

Subject: MRP 2.0 Comments

Dear Mr. Wolfe:

The City of Hayward (City) appreciates the opportunity to comment on the draft Municipal Regional Permit Tentative Order (MRP 2.0). We also appreciate the time Water Board staff has spent drafting the MRP 2.0 and working collaboratively with all Permittees during the new permit process. The City agrees with the clarifications and deletions proposed in the MRP 2.0 draft. These edits have improved the Permit by aligning requirements with lessons learned.

The City has the following general concerns/comments:

C.10. and C.12. – Hayward #1– STL

The MRP 2.0 does not appear to provide a clear and feasible pathway to attain compliance with the load reduction requirements. Specially, no feasible activities or best management practices have been described in the MRP 2.0 to show how the City can attain compliance. This leaves the City on uncertain ground regarding how to proceed to plan and implement programs for the near future. With this uncertainly, the MRP 2.0, in its current term, may cause the City to begin programs that will ultimately not lead to achieving compliance with the permit. Overall, the schedule proposed in the MRP 2.0 for new and current load reductions is infeasible and should allow more time for development, surveying, allocation, and collaborations to meet those reductions.

General - Reporting – Hayward #2– STL

Finally, the adoption date should be July 1, 2016 to avoid confusion of implementing both the MRP and MRP 2.0 during fiscal year 2015/2016 and complicating reporting for both the MRP and MRP 2.0 in the annual report. If adoption is scheduled for July **1,**2016, then subsequent dates of implementation in MRP 2.0 should be adjusted accordingly.

Department of Utilities & Environmental Services
Water Pollution Source Control

24499 Soto Road, Hayward, CA 94544-1430
Tel: 510/881-7900 • Fax: 510/881-7903 • TOO: 510/247-3340

In addition, the City has the following specific concerns/comments regarding the following provisions:

C.3 New Development and Redevelopment

C.3.h. – Hayward #3 – STL

- C.3.h: The language for inspection frequency is duplicative. The language should be simplified and clear such as "inspection once per permit term or once every five years."

C.3.j. – Hayward #4 – STL

- C.3.j: The green infrastructure plan requirement has no clear feasible pathway to attain compliance. City planning is not directed by pollutant reduction but focused on orderly growth and public safety. The City, however, can incorporate green infrastructure where feasible, but will require more time and guidance from the Water Board to meet the intent of the permit. The timeframe for the plan approval by the City's governing body within 12 months of adoption ofthe MRP 2.0 is infeasible and should be extended at least another year.

C.4. – Hayward #5 – STL

C.4 Industrial and Commercial Site Controls

- C.4.d: Including all potential violations as subject to the 10-day correction and compliance requirements is an unnecessary level of oversight by Water Board staff and should be removed. This level of regulatory oversight will cause additional reporting and workload in the field with no additional environmental benefit to the City's already successful, compliant, and praised commercial/industrial inspection program that has been established for decades. The City should be able to retain the discretion to determine compliance schedules and continue to abate illicit discharges proactively under its current inspection program.

C.10 Trash Load Reduction

C.10.a. – Hayward #6 – STL

- C.1O.a: Benchmarks included for the years 2016 and 2019 create an additional reporting burden for Permittees, are duplicative on top of the City's already detailed long-term trash reduction plan, and detract from actual trash reduction implementation (i.e. trash assessments). The benchmarks should be removed.

C.10.a. – Hayward #7 – STL

- C.1O.a: Compliance dates for the 70% and 100% reduction requirements should be extended and should be aligned with the California State trash TMDL and Caltran's trash requirements. An extension for compliance would allow the City the time to collaborate with agencies such as Caltrans and neighboring Permittees to install strategic trash capture devices under difficult and time-consuming construction and administrative constraints. For example, if compliance dates were aligned, it would facilitate installation of trash capture devices in Jackson Street/State Highway 92. The City has made good progress towards its goals of trash reduction. Please allow for this momentum to be extended so we can achieve our goals.

C.10.a. – Hayward #8 – STL

- C.1O.a: Compliance dates for the 70% and 100% should also be extended to allow time to complete BASMAA's study regarding retractable drop inlet screens in combination with frequent street sweeping as comparable and effective to full trash capture. If proven and approved, the City fully intends to implement this control measure as it is far cheaper than inlet or large trash capture devices and is a feasible alternative to devices where the

City's infrastructure does not have contiguous areas for efficient and large stormwater filtration. Please allow for the time needed for this study and align it with reduction compliance requirements in the permit.

C.10.b. – Hayward #9 – STL

- C.lO.b: The prescriptive requirements for the frequency of trash capture device maintenance are unnecessary and should be removed or altered to focus on inspection of devices and not actual cleanup. Trash capture devices are cleaned based on inspection, not based on trash generation rates where they are located. This requirement will create added work when the City has demonstrated adequate cleaning frequencies based on observations and needs.

C.10.e. – Hayward #10 – STL

- C.1O.e: True source control such as product bans as well as additional creek and shoreline cleanups should be encouraged and given more credit than the proposed percentages in the permit. The City allocates a tremendous amount of resources towards these activities and should receive more credit towards its trash reduction requirements.

C.10.e. – Hayward #11 – STL

- C.1O.e: It is unacceptable that public outreach is not included as credit towards trash reduction. Water Board staff should develop criteria for trash reduction credit for outreach efforts with demonstrated results via surveys or other traditional methods that determine a change in awareness, in public opinion and understanding in regards to pollution as these cultural changes are related to true source control. If no trash reduction credit is allowed for outreach efforts, then the requirement for trash outreach in C.7 should be removed.

C.12 Polychlorinated Biphenyls (PCBs) Controls

C.12.a. – Hayward #12 – STL

- C.12.a: The PCBs control requirements have no clear feasible pathway to attain compliance. The requirement for 0.5kg/yr and 3kg/yr reduction should be removed as there is no feasible way the City can achieve those goals. Development and redevelopment within the City is not focused on PCB reduction nor to a large extent planned as the City has no control of when or where private developments occur.

C.12.b. – Hayward #13 – STL

- C.12.b: The PCB requirements do not allow a sufficient amount oftime to study, quantify or report locations of PCB sites, the City's contribution ofPCBs, control measures planned or implemented, and the time to develop assessment methodology much less implement that methodology to assess if control measures are achieving PCB reduction. More time should be allowed to study environmental benefits with possible PCB reducing control methods available to achieve PCB reduction.

C.12.f. – Hayward #14 – STL

- C.12.f: The City has no control over when and where demolition projects occur and limited oversight over the environmental evaluations in regards to these projects. Creating a comprehensive PCB-containing building program is going to require working with state and federal agencies. The City cannot be the lead agency for creating a federal or state PCB program for demolition. A comprehensive program analogous to current programs for asbestos and lead-based paint will likely take much longer than three years to create. The City needs more time to collaborate within the Alameda County-Wide Clean Water Program collectively to work with the state and federal agencies to regulate demolition projects.

If you have any questions regarding the City's comments please don't hesitate to contact the City's Water Pollution Control Administrator, Elisa Wilfong, at (510) 881-7960 or at elisa.wilfong@hayward-ca.gov.

Sincerely,

Alex Ameri
Director of Utilities & Environmental Services

July 8, 2015

Bruce Wolfe, Executive Officer
California Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay St.
Oakland, CA 94612

Via email to: mrp.reissuance@waterboards.ca.gov

Subject: Opposition to the Tentative Order Reissuing the Municipal Regional Stormwater Permit (MRP 2.0)

Dear Mr. Wolfe and Members of the Board:

Thank you for the opportunity to comment on the Tentative Order Reissuing the Municipal Regional Stormwater Permit (MRP 2.0.) The City of Hercules continues to support the Water Board's objectives of reducing stormwater pollution and protecting our local creeks, the delta and San Francisco Bay. The City of Hercules has made significant investments in improvements to Refugio Creek and related tributaries and wetlands which eventually flow into the Bay, together with other improvements, all designed to enhance water quality. Additional enhancements will also be incorporated into future phases of the Regional Intermodal Transportation Center.

General – Hercules #1 – STL

For the past two years, representatives from Contra Costa municipalities, along with a consortium of Bay Area agencies and BASMAA, have been engaged in an ongoing dialogue with your staff regarding: experience gained and lessons learned from the current MRP; how to apply that experience toward maximizing the effectiveness of MRP 2.0, and ensuring that the requirements contained in MRP 2.0 provide for a clear path to compliance.

This process generated many new ideas and approaches that build upon experience gained and identify how to expand upon and enhance our stormwater pollution prevention efforts. It also advocated consolidating or eliminating "less beneficial tasks" in the permit, extending implementation dates, reducing reporting, and adjusting ongoing tasks to reduce effort while maintaining effectiveness in protecting water quality.

This approach acknowledges the reality that new or additional funding sources required to implement the new and expanded requirements contained in MRP 2.0 have yet to be identified; and, advocates allocating limited resources in ways that would focus upon, and maximize effectiveness of the major new and expanded mandates.

Despite the extensive effort, few of these ideas were carried forward into MRP 2.0 Therefore, the City of Hercules opposes MRP 2.0 as it is currently drafted; asks that your Board consider the following comments, and direct Water Board staff to work with permittees to revise the Tentative Order.

C.3. – Hercules #2 – STL

Major New and Expanded Mandates Should Be Offset by Eliminating Less Beneficial Tasks

The draft Tentative Order includes a new mandate to develop Green Infrastructure Plans. This coordinated, multi-year effort represents a significant paradigm shift toward developing comprehensive long range plans that will significantly reduce the amounts of urban runoff pollutants, including the pollutants of concern, flowing into receiving waters. It will also require significant investment on the part of all permittees.

In addition, the draft Tentative Order would require our City to do the following:

C.3. – Hercules #3 – STL

- Assess each planned infrastructure project and add Green Infrastructure features where feasible;

C.12. – Hercules #4 – STL

- Plan and implement a program to manage PCB-containing materials in commercial and industrial structures constructed or remodeled between 1950 and 1980 at the time those structures are demolished;

C.10. – Hercules #5 – STL

- Demonstrate trash load reductions of 70% from 2009 levels— up from the current 40% requirement—by installing full trash capture devices or implementing equivalent trash control measures and evaluating their effectiveness through visual surveys; and

C.10. – Hercules #6 – STL

- Require private property owners in high-trash and moderate-trash areas to install full trash capture devices or implement equivalent measures.

These major new mandates will require a significant, sustained effort to implement, absent any new or additional funding source.

General – Hercules #7 – STL

The attached table summarizes adjustments that have been presented to Water Board staff that would improve program efficiencies or eliminate certain less beneficial tasks. Comprehensive

information and rationale has been presented to support these requests. Inclusion of these changes in the MRP 2.0 will allow permittees to focus and apply our limited resources to the major new and expanded mandates, in order to achieve the greatest positive impact.
We request that your staff review the attached table and work with permittee representatives to make most or all of the recommended adjustments to "less beneficial tasks."

As a small City with limited staff and constrained resources, these new mandates represent a substantial burden. It is imperative that the Regional Board focus on the most value added components of the MRP 2.0 and that the "less beneficial tasks" be eliminated or adjusted as proposed by those who will be responsible for implementing them.

C.12. – Hercules #8 – STL

Permittees Must Have a Clear Path to Compliance

Considerable time and effort has been spent discussing how to reduce levels of pollutants of concern flowing into our waterways, particularly PCBs. Failure to achieve the reductions specified in MRP 2.0 could result in our City being held in noncompliance. However, as drafted, MRP 2.0 provides no clear path for permittees to avoid noncompliance. Some examples include:

- The draft Tentative Order mandates achieving specified reductions in the total quantity of PCBs discharged from municipal storm drains. A major means of achieving these reductions is through removal of PCBs during building demolitions. However this fails to acknowledge that permitees have no control over timing of when properties redevelop. *We ask that development of a program to control PCBs during building demolitions, rather than applying controls to a specified number of buildings demolished, should represent compliance with this requirement.*

C.12. – Hercules #9 – STL

- The Tentative Order includes (in the Fact Sheet) an incomplete method to achieve stipulated reduction credits for each building demolished with PCB controls, for each redeveloped site with new bioretention facilities, and for finding and abating concentrated sources of PCBs. Looking for hidden PCB sources is a good idea, but permittees can't guarantee that they will find them and be able to abate them. *We ask that development of a program to systematically identify and review potential sources, and refer them to appropriate agencies for abatement, be the basis for credit toward compliance.*

C.12. – Hercules #10 – STL

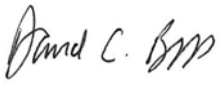
- The draft Tentative Order allows only four (4) months after Permit adoption for permittees to submit a more complete "measurement and estimation methodology and rationale" for stipulating PCB reduction credits. *We ask that BASMAA's PCBs programs accounting methodology be finalized, incorporated into the permit, and then used to calculate PCBs load reductions during permittee annual reporting.*

C.12. – Hercules #11 – STL

- Water Board staff has stated the threat of noncompliance is intended to strongly encourage permittees to find and abate hidden PCBs, and that Water Board staff would use "enforcement discretion" if and when permittees are unable to meet the mandated PCB load reductions. From a municipal government perspective, new financial and staffing commitments must be based on agreed upon goals and objectives, and have well-defined metrics for measuring progress. *We ask that the load reduction performance criteria not be the point of compliance, and that Water Board staff work with permittee representatives to revise the Draft Tentative Order so that it provides a clear and feasible pathway for permittees to attain compliance. Most factors that are key to meeting the load reduction performance criteria are uncertain and many are not within permittee control (e.g., extent of source properties that will be found, building demolition rates, and redevelopment rates), making achievement of compliance uncertain.*

The City of Hercules appreciates the efforts by your staff to develop permit requirements that are implementable and effective in improving surface water quality—a goal which we share. We look forward to resolution of the remaining issues and to implementing MRP 2.0.

Sincerely yours,



David Biggs
City Manager

Attachment

xc: Mayor and City Council
Mike Roberts, Public Works Director

Requested Adjustments to Improve Efficiency in the Municipal Regional Permit, Including Elimination of "Less Beneficial Tasks"

	Provision	Task or Requirement	Requested Adjustments
C.2.f. – Hercules #12 – STL	C.2.f.	Corporation Yard inspection requirements.	Eliminate this requirement, as it duplicates the requirements for inspections already included in the Stormwater Pollution Prevention Plans (SWPPPs) for these same facilities.
C.3.b.i. – Hercules #13 – STL	C.3.b.i.	Eliminates grandfathering of Regulated Projects with vested tentative maps approved prior to advent of C.3 requirements	Allow municipalities flexibility to require these applicants to implement stormwater treatment requirements only to the extent not in conflict with state law and existing development agreements
C.3.b.ii.(4) – Hercules #14 – STL	C.3.b.ii.(4)	Certain Roads Projects are Regulated Projects under Provision C.3	Delete this requirement as the intent is superseded by the Green Infrastructure requirements in Provision C.3.j.
C.3.b.ii.(1) (c) – Hercules #15 – STL	C.3.b.ii.(1)(c)	Requires projects where 50% or more of existing impervious area is redeveloped to provide treatment for entire area.	Delete this requirement as the intent is superseded by the Green Infrastructure requirements in Provision C.3.j.
C.3.e.ii. – Hercules #16 – STL	C.3.e.ii.	Special Projects—allowance to use non-LID treatment on smart growth development projects that meet specified location and gross density criteria.	To avoid a disincentive for including pedestrian amenities, allow public plazas to be omitted from calculation of project gross density.
C.3.e.v.(1) – Hercules #17 – STL	C.3.e.v.(1)	Requires Permittees to track Special Projects that have been identified (application submitted) but not approved.	Delete this requirement, as the number of projects, and amount of impervious area, has proven to be small.
C.3.e.v.(2) – Hercules #18 – STL	C.3.e.v.(2)	Requires Permittees to conduct and document an analysis of the feasibility of LID treatment for Special Projects.	Delete this requirement, as it creates considerable additional effort for applicants and Permittees without any expected water-quality benefit.
C.3.g.vii. – Hercules #19 – STL	C.3.g.vii.	Requires Contra Costa municipalities (through CCCWP) to submit a technical report describing how Contra Costa will implement current Permit hydromodification management requirements.	Delete requirement to submit a technical report. CCCWP submitted a 2013 report on the results of a multi-year monitoring study that concluded current policies and criteria meet these requirements.
C.3.g.iv. – Hercules #20 – STL	C.3.g.iv.	Allows Permittees to propose a different method for sizing hydromodification management facilities that is not biased against Low Impact Development, but requires a Permit amendment before using the method.	Delete requirement for a Permit amendment before the method is used. Note: the Fact Sheet accompanying the Tentative Order states that Water Board Executive Officer approval would be required, not a Permit amendment.

	Provision	Task or Requirement	Requested Adjustments
C.3.h.ii.(6)(b) – Hercules #21 – STL	C.3.h.ii.(6)(b) and (c)	Requires Permittees to inspect 20% of Regulated Projects annually, as well as every project at least once every 5 years.	Delete the annual requirement to allow flexibility in scheduling inspections.
C.3.j.i.(1) – Hercules #22 – STL	C.3.j.i.(1)	Requires each Permittee to prepare and implement a Green Infrastructure Plan (framework for Plan due in 12 months; Plan due in 2019)	Extend the time for submittal of the required framework to a minimum of 20 months.
C.4., C.5., and C.6. – Hercules #23 – STL	C.4, C.5, C.6	For inspections of businesses and construction sites, and for response to illicit discharges, requires that corrective actions of "actual or potential non-stormwater discharges" be implemented before the next rain event, but no longer than 10 business days after potential or actual non-stormwater discharges are discovered.	Delete references that specify types of corrective actions and timeframes for implementation, as these create a disincentive for identifying minor problems and create unproductive administrative work.
C.5.e.iii. – Hercules #24 – STL	C.5.e.iii.	Requires Permittees to report a list of mobile cleaners operating in their jurisdiction.	Delete, as this information is unavailable.
C.5.e.iii. – Hercules #25 – STL	C.5.e.iii.	Requires Permittees to report a list and summary of specific outreach events and education conducted to the different types of mobile businesses	Delete and clarify that requirements to inspect mobile businesses and abate discharges is covered by existing requirements elsewhere in Provisions C.4 and C.5.
C.7.a. – Hercules #26 – STL	C.7.a.	Permittees are required to mark and maintain "no dumping" markings on storm drain inlets.	Move this task to Provision C.2.
C.7.b. – Hercules #27 – STL	C.7.b.	Requires Permittees to participate in or contribute to "advertising" campaigns on specified subjects and assess results.	Change "advertising" to "outreach" to make explicit that a variety of methods, including social media, may be used. Delete references to specific subjects. Allow more flexibility.
C.9.c. – Hercules #28 – STL	C.9.c.	Requires Permittees to observe pesticide applications by their contractors.	Delete requirement.
C.10.a.i.a. – Hercules #29 – STL	C.10.a.i.a.	Requires Permittees to achieve a 70% load reduction by July 1, 2017	Extend this compliance date to 2018.
C.10.a.ii.b. – Hercules #30 – STL	C.10.a.ii.b.	Requires Permittees to ensure private properties plumbed directly to municipal storm drains are equipped with full trash capture devices or to verify "low" trash generation rate. Requires Permittees to investigate and map these properties.	Delete the mapping requirement and integrate inspections and enforcement into Provision C.4 (Commercial and Industrial Inspections).

	Provision	Task or Requirement	Requested Adjustments
C.10.b.1.a. – Hercules #31 – STL	C.10.b.1.a.	Specifies maintenance frequencies for full trash capture devices based on trash generation rates.	Set minimum frequency of 1x/year for all devices, to be adjusted based on maintenance experience. Required maintenance frequency is determined mostly by amount of leaf litter and type of device.
C.10.b.1.c. – Hercules #32 – STL	C.10.b.1.c.	Requires Permittees to certify that full trash capture systems are maintained to meet standard.	State that systems are maintained, and maintenance program is designed to meet standard.
C.10.b.iv. – Hercules #33 – STL	C.10.b.iv.	Allows a credit of up to 5% toward trash reduction requirement for source control actions such as product bans.	Increase maximum to 20% to fully credit existing product bans and to create incentive for future source control actions.
C.10.e.i. – Hercules #34 – STL	C.10.e.i.	Creates a formula for crediting trash collected during additional creek and shoreline cleanups toward trash reduction requirement—at a 1:10 ratio, with a 5% maximum credit.	Make the ratio 1:3 and increase maximum credit to 10%.
C.10.e. – Hercules #35 – STL	C.10.e.	Credits on-land cleanups and litter reduction only if visual assessments show a categorical change (e.g., from “very high” to “high” trash)	Allow interim credit for demonstrated actions intended to achieve categorical change.
C.10.a.iii. – Hercules #36 – STL	C.10.a.iii.	Requires bioretention facilities to be equipped with a screen to qualify as full-trash-capture facilities.	Specify that these facilities qualify as full trash capture. Screens could cause flooding.
C.10.b.iv. – Hercules #37 – STL	C.10.b.iv.	Requires observations of creeks and shorelines to determine whether trash control actions have prevented trash from discharging to receiving waters.	Restate purpose of observations, as it is not possible to determine that trash originated from storm drains.
C.10.e.ii. – Hercules #38 – STL	C.10.e.ii.	Provides 1:10 ratio up to 10% maximum credit for actions to reduce direct discharge of trash (e.g. dumping, encampments).	Increase ratio to 1:3, with no maximum, as in some locations this is the predominant source of trash.
C.10.f.ii. – Hercules #39 – STL	C.10.f.ii.	Produce an updated trash generation map each year.	Tie updated maps to compliance dates (for 70% and 100%).

reissuance, mrp@Waterboards

From:	Monty J Heying <mheying777@yahoo.com>
Sent:	Sunday, June 07, 2015 3:14 PM
To:	lyris@swrcb18.waterboards.ca.gov; reissuance, mrp@Waterboards
Cc:	April Squires; Michael D.; Elissa Vinson; Gretchen Lipow; Eric Kos; Chris Ringewald; Trish Spencer; Crane, Dave@Wildlife; Goeden, Brenda@BCDC; Weston Robert Env. Health; Sharol Nelson-Embry; Christian, Elizabeth@Waterboards; City Manager; DOUGLAS LONG; pw@alamedaca.gov
Subject:	Re: Notice of Public Workshop and Hearings for the Tentative Order for the SF Bay Region Municipal Regional Stormwater Permit
Attachments:	May 2015 Public Notice FINAL.pdf

I would like speak at the June 10 meeting in support of the tentative draft and would like to know what audio-visual aids are available at the auditorium.

Specifically, I would like to present from my laptop computer showing photographic evidence of environmental damage
to San Francisco Bay apparently caused by dischages from the "finger" lagoons on Alameda Island. My computer can use either HDMI or SVGA connection or I can supply a CD for someone to project from a site computer.

It would also be good, but not essential, if a wireless internet connection were available so I can present findings and evidence from my "Alamedagoo.org" blog, documenting my extensive and continuing investigation of a toxic spill I witnessed and tried unsuccessfully to report and strongly suspect was discharged from Alameda's lagoons and that may also be the source of the co-called "Mystery Goo" that killed the 300 seabirds in January.

My findings point to a potentially catastrophic ecological threat to the waterfowl and marine habitat in San Leandro Bay stemming from apparent chemical-laden discharges from Alameda's finger lagoons. Tidal patterns caused by dredging in the Oakland-Alameda ship channel and the build-up of sediments due to four years of drought are also a suspected factor in the routing of lagoon emissions repeatedly and regularly through San Leandro Bay, thereby exposing the fragile marine habitat there to an accumulation of toxins.

Heying Comment #1 - JBO

I consider Alameda's finger lagoons to be integral to the City's storm sewer system, either as a "catch basin" or as a "man-made channel" as defined in the MS4 regulation. ***These lagoons are therefore subject to the pending regulation the same as a storm drain or any other element of our stormwater system.*** I seek confirmation that this is the case, and if not, why not and what it takes to appeal any such adverse determination. I also want to be informed of the enforcement process and how best concerned citizens such as myself can be of assistance in this regard.

Please let me know of any time limits and the aforementioned A-V hookups.

I will phone tomorrow afternoon to follow-up.

Sincerely,

Monty J Heying
Alameda, CA

510-872-3144 (cell)
510-749-8386 (land/fax)

On Monday, May 11, 2015 4:17 PM, "lyris@swrcb18.waterboards.ca.gov" <lyris@swrcb18.waterboards.ca.gov> wrote:

California Regional Water Quality Control Board

San Francisco Bay Region
1515 Clay Street, Suite 1400, Oakland, CA 94612

NOTICE OF PUBLIC WORKSHOP HEARINGS AND PUBLIC COMMENT PERIOD

FOR THE TENTATIVE ORDER
FOR THE SAN FRANCISCO
BAY REGION
MUNICIPAL REGIONALAL STORMWATER PERMIT

Notice is hereby given that the San Francisco Bay Regional Water Quality Control Board's staff has prepared a tentative order for the National Pollutant Discharge Elimination System (NPDES) permit under the Clean Water Act covering municipal stormwater discharges from the entities listed below (Permittees). This Municipal Regional Stormwater Permit (Draft MRP), if adopted, will replace Permittees' existing regional NPDES permit. Each Permittee owns and/or operates a municipal separate storm sewer system (MS4) from which stormwater is discharged into receiving waters including Bay Area creeks and rivers, San Francisco Bay, and the Pacific Ocean. The MRP will require the Permittees to reduce the discharge of pollutants from their MS4s to the maximum extent possible and to effectively prohibit non-stormwater discharges into storm sewers. The Draft MRP requires Permittee actions in the following areas: municipal operations; new development and redevelopment; industrial and commercial site controls; illicit discharge detection and elimination; construction site controls; public information and outreach; water quality monitoring; and specific pollutant controls, including for pesticides, trash, mercury, PCBs, pathogens, and copper.

> The cities of Alameda, Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Newark, Oakland, Piedmont, Pleasanton, San Leandro, Union City, Alameda County, the Alameda County Flood Control and Water Conservation District, and Zone 7 of the Alameda County Flood Control and Water Conservation District, which have joined together to form the Alameda Countywide Clean Water Program
>
> The cities of Clayton, Concord, El Cerrito, Hercules, Lafayette, Martinez, Orinda, Pinole, Pittsburg, Pleasant Hill, Richmond, San Pablo, San Ramon, Walnut Creek, the towns of Danville and Moraga, Contra Costa County, Contra Costa County Flood Control and Water

Conservation District, which have joined together to form the Contra Costa Clean Water Program

The cities of Campbell, Cupertino, Los Altos, Milpitas, Monte Sereno, Mountain View, Palo Alto, San Jose, Santa Clara, Saratoga, Sunnyvale, the towns of Los Altos Hills and Los Gatos, Santa Clara Valley Water District, County of Santa Clara, which have joined together to form the Santa Clara Valley Urban Runoff Pollution Prevention Program 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, South San Francisco, The towns of Atherton, Colma, Hillsborough, Portola Valley, and Woodside, the San Mateo County Flood Control District and San Mateo County, which have joined together to form the San Mateo Countywide Water Pollution Prevention Program

The cities of Fairfield and Suisun City, which have joined together to form the Fairfield-Suisun Urban Runoff Management Program

The City of Vallejo and the Vallejo Sanitation and Flood Control District

Notice is additionally hereby given that the Water Board will hold two public workshop hearings to receive oral testimony on the Draft MRP as follows:

DATE: Wednesday, June 10, 2015
TIME: 9:00 AM (approximate)
LOCATION: Elihu M. Harris State Building
First Floor Auditorium
1515 Clay Street
Oakland, CA 94612

At this hearing, the Board will accept oral testimony for all provisions of the Draft MRP, **except** for Provision C.10. – Trash Load Reduction.

DATE: Wednesday, July 8, 2015
TIME: 9:00 AM (approximate)
LOCATION: Elihu M. Harris State Building
First Floor Auditorium
1515 Clay Street
Oakland, CA 94612

At this hearing, the Board will accept oral testimony for Provision C.10. – Trash Load Reduction and any testimony that the Board continued at the June 10, 2015, hearing due to time constraints.

To ensure productive and efficient workshops in which all participants have an opportunity to participate, oral testimony may be time-limited. The Board will not be adopting the Draft MRP at these workshop hearings. The Board will consider adopting the Draft MRP at a future noticed hearing.

Any updates or changes in the date, time, and place of the public workshops will be noticed on the MRP Lyris email list. **Any person desiring to receive future notices on the Draft MRP must sign up for the MRP Lyris email list.** To sign up for the Lyris list, access the email list subscription form and select "Municipal Regional Stormwater Permit Reissuance" at http://www.waterboards.ca.gov/resources/email_subscriptions/reg2_subscribe.shtml.

Notice is additionally hereby given that there will be a written public comment period on the Draft MRP. **The deadline for receipt of written comments on the Draft MRP is 5:00 p.m. on Friday, July 10, 2015.** Written comments should be submitted to the following email address:

mrp.reissuance@waterboards.ca.gov. Please submit all attachments to the email as one electronic file with a file name clearly identifying the commenting entity. Written comments may also be submitted by mail to: Dale Bowyer, 1515 Clay St., Ste. 1400, Oakland, CA 94612.

Persons wishing to file written comments on or objections to the Draft MRP or other aspects of this matter must do so no later than this deadline, so that the comments may be considered. No written comments will be accepted or responded to in writing after that date. Interested persons are invited to attend and express their views at the workshops on this matter.

Pursuant to California Code of Regulations Title 23 section 2050(c), any party who challenges the Board's action through a petition to the State Water Resources Control Board under Water Code section 13320 will be limited to raising only those substantive issues that were raised before the Board at the hearing or in timely submitted correspondence.

All documents related to the MRP may be inspected at the Water Board office and are also available at: http://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/stormwater/Municipal/mrp_sw_reissuance.shtml.

If you have any questions regarding this matter, or would like an electronic copy of the documents in compact disk format or a paper copy sent by mail, please contact Dale Bowyer at (510) 622-2323, via U.S. Mail to Dale Bowyer, Regional Water Board, 1515 Clay Street, Suite 1400, Oakland CA 94612, or via email to mrp.reissuance@waterboards.ca.gov.

Keep Coyote Creek Beautiful

Working Together for a Vibrant Coyote Creek

July 7, 2015

TO: Bruce Wolfe, Executive Officer
& San Francisco Regional Water Quality Control Board Members

RE: July 8 Board meeting agenda #6: Municipal Regional Stormwater NPDES Permit Tentative Order

Over the past year, my community group of volunteers has worked closely with the City of San José to remove trash that has accumulated over the past 30+ years in Coyote Creek. Working a 4-mile section, we've held 13 creek cleanup events with over 3,000 volunteer hours removing nearly 40 tons of trash from this creek. The City has been a key partner and provided many direct services related to these events, such as supplies, staff, and trash collection. We greatly appreciate the City's support, and will continue our work this coming fiscal year through a partnership grant.

I write today to support the changes that the City is requesting regarding the Tentative Order, specifically around the value of offsets for load reduction benefits and for creek cleanups. I learned of the values for these items and believe they are too low. These number should more accurately reflect the value of the sustained volunteer time and effort to remove trash from the streets and waterways of our communities, and for the need for flexibility in accounting:

C.10 – Trash Accounting – Keep Coyote Creek Beautiful - # 1 - REL

1. Increase the maximum offset for robust programs addressing creek cleanups to 10% and direct discharges to 25%. The current 5% offset listed at C.10.e. is much too low when you consider the value of the volunteer hours.

C.10 – Trash Accounting – Keep Coyote Creek Beautiful - # 2 - REL

2. Reduce the ratio of trash removed to a reduction value to 3:1, similar to other types of mitigation programs. The current 10:1 level is way too high.

C.10 – Trash Accounting – Keep Coyote Creek Beautiful - # 3 - REL

3. Remove the requirement for a minimum cleanup frequency of two times a year at each specific cleanup location. Working Coyote Creek, the trash flows with the water, so limiting the "site" location and cleanup frequency is inflexible. We know that removing trash from the streets and creeks, regardless of its location, is the most important element of the cleanups.

Thank you for considering these comments.

Deb Kramer

LAFAYETTE
SI'MU'D1141-r«XXIIPPRATmID

City Council

Brandt Andersson, Mayor
TraciReilly, Vice Mayor
Mike Anderson, Council Member
Mark Mitchell, Council Member
Don Tatzin, Council Member

July 7, 2015

Bruce Wolfe, Executive Officer
California Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay Street
Oakland, CA 94612

Via email to: mrp.reissuance@waterboards.ca.gov

Subject: Opposition to the Tentative Order Reissuing the Municipal Regional Stormwater Permit (MRP 2.0)

Dear Mr. Wolfe and Members of the Board:

Thank you for the opportunity to comment on the Tentative Order Reissuing the Municipal Regional Stormwater Permit (MRP 2.0.) The City of Lafayette continues to support the Water Board's objectives of reducing stormwater pollution and protecting our local creeks, the delta and San Francisco Bay.

General – Lafayette #1 – STL

For the past two years, representatives from Contra Costa municipalities, along with a consortium of Bay Area agencies and BASMAA, have been engaged in an ongoing dialogue with your staff regarding how to ensure that the requirements contained in MRP 2.0 provide for a clear and reasonable path to compliance that is fiscally sustainable.

Despite the extensive effort, the current draft is neither reasonable nor sustainable, and Lafayette therefore cannot support MRP 2.0 as it is currently drafted. We therefore ask that your Board consider the following comments, and direct Water Board staff to work with permittees to revise the Tentative Order.

C.3. – Lafayette #2 – STL

Major New and Expanded Mandates Should Be Offset by Eliminating Less Beneficial Tasks

The draft Tentative Order includes a new mandate to develop Green Infrastructure Plans. This coordinated, multi-year effort represents a significant paradigm shift toward developing comprehensive long range plans that will significantly reduce the amounts of urban runoff pollutants, including the pollutants of concern, flowing into receiving waters. It will also require significant investment on the part of all permittees.

In addition, the draft Tentative Order would require Lafayette to do the following:

C.3. – Lafayette #3 – STL

- Assess each planned infrastructure project and add Green Infrastructure features where feasible;

C.12. – Lafayette #4 – STL

- Plan and implement a program to manage PCB-containing materials in commercial and industrial structures constructed or remodeled between 1950 and 1980 at the time those structures are demolished;

C.10. – Lafayette #5 – STL

- Demonstrate trash load reductions of 70% from 2009 levels- up from the current 40% requirement-by installing full trash capture devices or implementing equivalent trash control measures and evaluating their effectiveness through visual surveys; and

C.10. – Lafayette #6 – STL

- Require private property owners in high-trash and moderate-trash areas to install full trash capture devices or implement equivalent measures.

These major new mandates will require a significant, sustained effort to implement, absent any new or additional funding source.

C.12. – Lafayette #11 – STL

Permittees Must Have a Clear Path to Compliance

Considerable time and effort has been spent discussing how to reduce levels of pollutants of concern flowing into our waterways, particularly PCBs. Failure to achieve the reductions specified in MRP 2.0 could result in Lafayette being held in noncompliance. However, as drafted, MRP 2.0 provides no clear path for permittees to avoid noncompliance. Some examples include:

- The draft Tentative Order mandates achieving specified reductions in the total quantity of PCBs discharged from municipal storm drains. A major means of achieving these reductions is through removal of PCBs during building demolitions. However this fails to acknowledge that permittees have no control over timing of when properties redevelop. We ask that development of a program to control PCBs during building demolitions, rather than applying controls to a specified number of buildings demolished, should represent compliance with this requirement.

C.12. – Lafayette #12 – STL

- The Tentative Order includes (in the Fact Sheet) an incomplete method to achieve stipulated reduction credits for each building demolished with PCB controls, for each redeveloped site with new bioretention facilities, and for finding and abating concentrated sources of PCBs. Looking for hidden PCB sources is a good idea, but permittees can't guarantee that they will find them and be able to abate them. We ask that development of a program to systematically identify and review potential sources, and refer them to appropriate agencies for abatement, be the basis for credit toward compliance.

C.12. – Lafayette #13 – STL

- The draft Tentative Order allows only four (4) months after Permit adoption for permittees to submit a more complete "measurement and estimation methodology and rationale" for stipulating PCB reduction credits. We ask that BASMAA's PCBs programs accounting

methodology be finalized, incorporated into the permit, and then used to calculate PCBs load reductions during permittee annual reporting.

C.12. – Lafayette #14 – STL

- Water Board staff has stated the threat of noncompliance is intended to strongly encourage permittees to find and abate hidden PCBs, and that Water Board staff would use "enforcement discretion" if and when permittees are unable to meet the mandated PCB load reductions. From a municipal government perspective, new financial and staffing commitments must be based on agreed upon goals and objectives, and have well-defined metrics for measuring progress. We ask that the load reduction performance criteria not be the point of compliance, and that Water Board staff work with permittee representatives to revise the Draft Tentative Order so that it provides a clear and feasible pathway for permittees to attain compliance. Most factors that are key to meeting the load reduction performance criteria are uncertain and many are not within permittee control (e.g., extent of source properties that will be found, building demolition rates, and redevelopment rates), making achievement of compliance uncertain.

The City of Lafayette appreciates the efforts by your staff to develop permit requirements that are implementable and effective in improving surface water quality-a goal which we share. We look forward to resolution ofthe remaining issues and to implementing MRP 2.0.

Sincerely,

Brandt Andersson
Mayor

LEAGUE® OF CALIFORNIA CITIES

EAST BAY DIVISION

July 9, 2015

Bruce Wolfe, Executive Officer
California Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay St.
Oakland, CA 94612

Dear Mr. Wolfe and Members of the Board:

Thank you for the opportunity to comment on the Tentative Order Reissuing the Municipal Regional Stormwater Permit (MRP 2.0.). The League of California Cities, East Bay Division, supports the Water Board's objectives of reducing stormwater pollution and protecting our local creeks, the delta and San Francisco Bay.

The League of California Cities has standing policy supporting the development of objectives and standards to assure high quality water throughout California and that surface and groundwater should be protected from contamination.

General – Recognize differences between cities and regions and availability of funding – League of California Cities - #1 – REL

The League also supports the development of economic protocols and guidelines to assist local governments and water boards in determining reasonably achievable, cost effective and environmentally sound regulations. We urge you to take into careful consideration the concerns that you are receiving from cities regarding MRP 2.0. Any water board policy changes should recognize the inherent differences between cities and regions in California and should also take into consideration the funding, or lack thereof, for the implementation of such practices.

The League of California Cities, East Bay Division, appreciates your efforts to develop permit requirements that are implementable and effective in improving surface water quality—a goal which we share. We look forward to resolution of the remaining issues so that our cities can effectively implement MRP 2.0.

Sincerely,

Janet Abelson

Janet Abelson
President, East Bay Division
Council Member, City of El Cerrito

LIVERMORE
CALIFORNIA

July 1, 2015

Mr. Bruce Wolfe, Executive Officer
California Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay Street, Suite 500
Oakland, CA 94612

Subject: Comments on Municipal Regional Stormwater 2.0 NPDES Permit Tentative Order/ NPDES PERMIT NO. CAS612008

Dear Mr. Wolfe:

The City of Livermore is filing these comments with regard to the Municipal Regional Stormwater 2.0 NPDES Permit for Dischargers from Municipal Phase I Permittees in the San Francisco Bay Region Tentative Order issued on May 11, 2015. We request that you include our comments in the record of this administrative proceeding.

General – Livermore #1 – STL

In general, the Tentative Order for the Municipal Regional Stormwater Permit 2.0 includes a great deal of new and/or significantly enhanced requirements that will result in a substantial expenditure of public resources. The City believes many of these requirements, C.3 .j. "Green Infrastructure Planning and Implementation and the C.10 Trash Load Reduction", in particular, may be challenged as unfunded mandates. Specifically, the City of Livermore has the following comments regarding the Municipal Regional Stormwater 2.0 NPDES Permit Tentative Order:

C.3.b.i. – Livermore #2 – STL

1. **C.3.b.i. Regulated Projects:** This provision requires any regulated project that was approved "pre-C.3" and has not begun construction to comply with the Low Impact Development requirements. The City has serious concerns surrounding its legal authority to impose new requirements on existing entitled projects; and thus, would not be able to legally comply with this permit requirement. As this requirement would only apply to a significantly small number of projects while creating many legal issues and potential litigation, the City encourages the Board to delete this requirement.

C.3.h. – Livermore #3 – STL

2. **C.3.h. Operation and Maintenance of Stormwater Treatment Systems:** Provision C.3.h.ii.6 requires the tracking and inspection of all pervious pavement systems that total 3000 square feet or more. This as an unnecessarily burdensome requirement to track and inspect this one specific stormwater treatment measure. The existing permit, as well as the Tentative Order for MRP 2.0, already requires permittees to develop and implement a comprehensive Operation and Maintenance program to inspect Stormwater Treatment

Measures. Provision C.3.h.ii.6 should therefore, be deleted.

C.3.j. – Livermore #4 – STL

3. **C.3.j. Green Infrastructure Planning and Implementation:** This provision requires Permittees to *"complete and implement* a *Green Infrastructure Plan for the inclusion of low impact development drainage design into storm drain infrastructure on public and private lands, including streets, roads, storm drains, parking lots, building roofs, and other storm drain infrastructure elements…the plan is intended to describe how the Permittees will shift their impervious surfaces and storm drain infrastructure from gray, or traditional storm drain infrastructure where runoff flows directly into the storm drain and then the receiving water to green-that is, to* a *more resilient, sustainable system that slow runoff by dispersing it to vegetated areas, harvest and uses runoff, promotes infiltration and evapotranspiration, and uses bioretention and other green infrastructure practices to clean stormwater runoff."* In general, the City believes this provision, as currently drafted, is seriously flawed, fails to consider all of the associated financial costs to municipalities, fails to recognize the funding limitations and constraints faced by municipalities, and goes well beyond the scope of "maximum extent practicable" creating an unfunded mandate.

C.3.j.i.(1)(a) – Livermore #5 – STL

Provision C.3.j.i.(1)(a) requires *"Permittees to prepare* a *framework for development of its Green Infrastructure Plan and have the framework approved by the Permittee's governing body, mayor, city manager or county manager within 12 months of the Permit effective date."* This task will be an extensive, resource-intensive effort, which cannot be achieved in such a short timeframe. The schedule for completion should be extended to 36 months at a minimum.

C.3.j.i.(1)(c) , C.11., and C.12 – Livermore #6– STL

Provision C.3.j.i(1)(c) requires Permittees to establish *"Targets for the amount of impervious surface within the Permittees jurisdiction to be retrofitted over the following time schedules: (i) Within 2 years of the Permit effective date; (ii) Within 7 years of the Permit effective date (5-year horizon); (iii) Within 12 years of the Permit effective date (10-Year horizon); (iv) Within 27 years of the Permit effective date (25-Year Horizon); and (v) Within 52 years of the Permit effective date (50-year horizon)."* This section of the draft Tentative Order should be revised to allow for the development of "projections" rather than "targets" and allow Permittees to include projected private development as well as public projects. It should also be revised to allow the "projections" to be developed for the years 2020, 2030, 2040, and 2065 to be consistent with the timeframes contained in Provisions C.11 and C.12.

C.10. – Livermore #7– STL

4. **C.10 Trash Load Reductions:** This provision requires Permittees *"to demonstrate compliance with Discharge Prohibition A.2 and trash-related Receiving Water Limitations through the timely implementation of control measures and other actions to reduce trash loads from municipal separate storm sewer systems in accordance with the requirements of this provision.....Permittee shall reduce trash discharges from 2009 levels…to receiving waters in accordance with the following schedule: (a) 70 percent by July, 2017; and (b) 100% or no adverse impact to receiving waters from trash by*

July 1, 2022". While the permit does not specifically require Permittees to install trash capture devices as the sole prescribed means to meet these trash reduction objectives, it has become quite clear over the term of the existing MRP that the only undebatable way for Permittee's to demonstrate compliance with

this provision to the San Francisco Bay Regional Water Quality Board will be to install full trash capture devices. While the City of Livermore and fellow members of the Alameda Countywide Cleanwater Program have made considerable progress in meeting the trash reduction objectives specified in the MRP, the schedule for meeting the 70% and 100% trash reduction goals needs to be extended. At a minimum, the City encourages the Board to revise this provision to be in alignment with the time tables established in the State Water Board's Trash Amendments to the Water Quality Control Plan for Ocean Waters of California that were proposed for consideration and adoption April 7, 2015. In doing so, Permittees would have 10 years from the effective date of the permit to install trash capture devices to comply with this provision. Alignment of this provision with the State Water Board's Ocean Plan would not only allow a reasonable time period for municipalities to plan and secure funding for the capital improvement projects necessary to demonstrate compliance, it would establish a fair and uniform regulatory environment in regards to Trash for all municipalities throughout the State. Additionally, the City has the following comments on specific sections of the C.10 Trash Load Reduction Provision:

C.10.a.ii.b. – Livermore #8– STL

Provision C.10.a.ii.b, Trash Generation Area Management, states that *"Permittees shall ensure that lands that they do not own or operate but that are plumbed directly to their storm drains systems in Vety High, High, and Moderated trash generation areas are equipped with full trash capture systems or are managed with trash discharge control actions equivalent or better than full trash capture systems...Permittees shall map all such lands greater than 5000 ft2 that are plumbed directly to their storm drain systems by 2018..."* This mapping requirement would require a tremendous effort with no clear water quality related benefit, and therefore, the City encourages the Board to delete it from the Tentative Order.

C.10.b.iv. – Livermore #9– STL

Provision C.10.b.iv, Source Control, establishes a 5% maximum reduction for all jurisdiction- wide actions (i.e. polystyrene foam bans and plastic bag bans). The maximum credit allowed for source control actions should be expanded. The Alameda Countywide Storm Drain Trash Monitoring and Characterization Project conducted under the MRP demonstrated an 8% reduction from such existing actions.

C.10.e.i. – Livermore #10– STL

Provision C.10.e.i, Optional Trash Load Reduction Offset Opportunities, states that *"Permittee may claim a load reduction offset of one percent for each total of trash volume removed from additional cleanups that is ten percent of the Permittee's 2009 trash load volume estimates, based on its trash generation maps and average categorical trash generation rates, in accordance with the following formula..."* The City of Livermore, along with many other municipalities expends a significant amount of resources to clean up trash around local creeks. These endeavors are often the most

effective approach to reducing trash that is having a direct impact on local waterways. The Board should encourage and promote

such activities; not discourage them. Unfortunately, in these situations, the MRP forces municipalities to direct their limited resources to those activities which equate to permit compliance as opposed to those activities that have a positive benefit upon water quality. Taking the approach to arbitrarily place a cap on the maximum offset for such efforts will result in municipalities limiting or ceasing efforts such as Livermore's Adopt A Creek Spot Program, which are of great benefit to its local waterways, all together. If the Board is to place a cap on the maximum offset for these types of activities at all, it should, at a minimum, be increased to 15 percent.

The City of Livermore would like to thank the Board for the opportunity to provide these comments on the Municipal Regional Stormwater 2.0 NPDES Permit for Dischargers from Municipal Phase I Permittees in the San Francisco Bay Region Tentative Order issued on May 11, 2015. We appreciate your attention to these comments and we look forward to a renewed dialogue with Board staff as we progress through this permit adoption process. Please contact Steven Aguiar, Environmental Compliance Supervisor, at 925-960-8126 for further discussion of these comments.

Sincerely,

reenwood

Public Works Director
City of Livermore, Public Works Department
(925) 960-8003

cc: Helen Ling, Acting Water Resources Division Manager, City of Livermore
Stephan Kiefer, Community Development Director, City of Livermore
Cheri Sheets, City Engineer, City of Livermore

June 25, 2015

Bruce Wolfe, Executive Officer
California Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay St.
Oakland, CA 94612

Via email to: mrp.reissuance@waterboards.ca.gov

Subject: Opposition to the Tentative Order Reissuing the Municipal Regional Stormwater Permit (MRP 2.0)

Dear Mr. Wolfe and Members of the Board:

Thank you for the opportunity to comment on the Tentative Order Reissuing the Municipal Regional Stormwater Permit (MRP 2.0.) The City of Martinez continues to support the Water Board's objectives of reducing stormwater pollution and protecting our local creeks, the delta and San Francisco Bay.

General – Martinez #1 – STL

For the past two years, representatives from Contra Costa municipalities, along with a consortium of Bay Area agencies and BASMAA, have been engaged in an ongoing dialogue with your staff regarding: experience gained and lessons learned from the current MRP; how to apply that experience toward maximizing the effectiveness of MRP 2.0, and ensuring that the requirements contained in MRP 2.0 provide for a clear path to compliance.

This process generated many new ideas and approaches that build upon experience gained and identify how to expand upon and enhance our stormwater pollution prevention efforts. It also advocated consolidating or eliminating "less beneficial tasks" in the permit, extending implementation dates, reducing reporting, and adjusting ongoing tasks to reduce effort while maintaining effectiveness in protecting water quality.

This approach acknowledges the reality that new or additional funding sources required to implement the new and expanded requirements contained in MRP 2.0 have yet to be identified; and, advocates allocating limited resources in ways that would focus upon, and maximize effectiveness of the major new and expanded mandates.

Despite the extensive effort, few of these ideas were carried forward into MRP 2.0 Therefore, the opposes MRP 2.0 as it is currently drafted; asks that your Board consider the following comments, and direct Water Board staff to work with permittees to revise the Tentative Order.

C.3. – Martinez #2 – STL

Major New and Expanded Mandates Should Be Offset by Eliminating Less Beneficial Tasks

The draft Tentative Order includes a new mandate to develop Green Infrastructure Plans. This coordinated, multi-year effort represents a significant paradigm shift toward developing comprehensive long range plans that will significantly reduce the amounts of urban runoff pollutants, including the pollutants of concern, flowing into receiving waters. It will also require significant investment on the part of all permittees.

In addition, the draft Tentative Order would require our City to do the following:

C.3. – Martinez #3a – STL

- Assess each planned infrastructure project and add Green Infrastructure features where feasible;

C.12. – Martinez #3 – STL

- Plan and implement a program to manage PCB-containing materials in commercial and industrial structures constructed or remodeled between 1950 and 1980 at the time those structures are demolished;

C.10. – Martinez #4 – STL

- Demonstrate trash load reductions of 70% from 2009 levels— up from the current 40% requirement—by installing full trash capture devices or implementing equivalent trash control measures and evaluating their effectiveness through visual surveys; and

C.10. – Martinez #5 – STL

- Require private property owners in high-trash and moderate-trash areas to install full trash capture devices or implement equivalent measures.

These major new mandates will require a significant, sustained effort to implement, absent any new or additional funding source.

C.12. – Martinez #6 – STL

The City recommends that PCB management be implemented statewide or nationwide through similar programs that lead paint and asbestos are abated, not on a local level with staff that is not experts in identifying and abating this pollutant.

C.10. – Martinez #7 – STL

In addition, MRP 2.0, as written, does not give cities full credit towards our trash reduction requirement, for litter removal. In fact the proposed regulation de-incentivizes the removal of trash in areas where it is needed most. For example frontage roads along freeways, which are normally

zoned commercial, typically have high trash loads associated with them. Significant amounts of trash can be removed with the same effort to remove minor amounts of trash in areas with lower trash loads associated with them. However, with the proposed accounting method, a city could reduce the trash load 75% in these high trash load areas without getting any credit towards our overall trash reduction goal.

C.10. – Martinez #8 – STL

On this same note, last summer our Council passed a plastic bag and enhanced a polystyrene ban. This was a very unpopular action with voters and business owners. MRP 2.0 proposes to reduce our expected credit for this action.

The attached table summarizes adjustments that have been presented to Water Board staff that would improve program efficiencies or eliminate certain less beneficial tasks. Comprehensive information and rationale has been presented to support these requests. Inclusion of these changes in the MRP 2.0 will allow permittees to focus and apply our limited resources to the major new and expanded mandates, in order to achieve the greatest positive impact.

We request that your staff review the attached table and work with permittee representatives to make most or all of the recommended adjustments to "less beneficial tasks." A few of the Trash Load requirements in the table the City would like the Board to focus on are:

C.10. – Martinez #9 – STL

- To increase the Trash Load Reduction credit up to a maximum of 20% to fully credit existing product bans and to create incentive for future source control actions. Cities need to receive full credit for their actions to achieve reduction requirements.

C.10. – Martinez #10 – STL

- Create a formula for crediting trash collected during additional creek and shoreline cleanups toward trash reduction requirement—at a 1:3 ratio, with a 10% maximum credit. Again, cities need to receive full credit for their actions to achieve reduction requirements.

C.10. – Martinez #11 – STL

- To extend the 70% reduction in trash load compliance date by one year, to 2018. Board staff, through the natural learning process, has changed direction and requirements several times over the last three years that contributed to many agencies not meeting the 40% reduction requirement. Extending the compliance date will ensure permittees have a fair chance to overcome past misdirection and to meet the new requirement.

C.10. – Martinez #12 – STL

- Delete the mapping requirement and integrate inspections and enforcement into Provision C.4 (Commercial and Industrial Inspections). It will take a tremendous effort and have significant cost impacts, with little benefit, to map all private storm drain systems, most of which tie into City systems or directly to creeks. Our current Commercial and Industrial Inspection Program provides adequate oversight to determine potential pollutant sources and means for mitigating them.

C.12. – Martinez #13 – STL

Permittees Must Have a Clear Path to Compliance

Considerable time and effort has been spent discussing how to reduce levels of pollutants of concern flowing into our waterways, particularly PCBs. Failure to achieve the reductions specified in MRP 2.0 could result in our City being held in noncompliance. However, as drafted, MRP 2.0 provides no clear path for permittees to avoid noncompliance. Some examples include:

C.12. – Martinez #14 – STL

- The draft Tentative Order mandates achieving specified reductions in the total quantity of PCBs discharged from municipal storm drains. A major means of achieving these reductions is through removal of PCBs during building demolitions. However this fails to acknowledge that permitees have no control over timing of when properties redevelop. *We ask that development of a program to control PCBs during building demolitions, rather than applying controls to a specified number of buildings demolished, should represent compliance with this requirement.*

C.12. – Martinez #15 – STL

- The Tentative Order includes (in the Fact Sheet) an incomplete method to achieve stipulated reduction credits for each building demolished with PCB controls, for each redeveloped site with new bioretention facilities, and for finding and abating concentrated sources of PCBs. Looking for hidden PCB sources is a good idea, but permittees can't guarantee that they will find them and be able to abate them. *We ask that development of a program to systematically identify and review potential sources, and refer them to appropriate agencies for abatement, be the basis for credit toward compliance.*

C.12. – Martinez #16 – STL

- The draft Tentative Order allows only four (4) months after Permit adoption for permittees to submit a more complete "measurement and estimation methodology and rationale" for stipulating PCB reduction credits. *We ask that BASMAA's PCBs programs accounting methodology be finalized, incorporated into the permit, and then used to calculate PCBs load reductions during permittee annual reporting.*

C.12. – Martinez #17 – STL

- Water Board staff has stated the threat of noncompliance is intended to strongly encourage permittees to find and abate hidden PCBs, and that Water Board staff would use "enforcement discretion" if and when permittees are unable to meet the mandated PCB load reductions. From a municipal government perspective, new financial and staffing commitments must be based on

agreed upon goals and objectives, and have well-defined metrics for measuring progress. *We ask that the load reduction performance criteria not be the point of compliance, and that Water Board staff work with permittee representatives to revise the Draft Tentative Order so that it provides a clear and feasible pathway for permittees to attain compliance. Most factors that are key to meeting the load reduction performance criteria are uncertain and many are not within permittee control (e.g., extent of source properties that will be found, building demolition rates, and redevelopment rates), making achievement of compliance uncertain.*

The City of Martinez appreciates the efforts by your staff to develop permit requirements that are implementable and effective in improving surface water quality—a goal which we share. We look forward to resolution of the remaining issues and to implementing MRP 2.0.

Sincerely,

Rob Braulik,
City Manager

Attachment

Attachment

Requested Adjustments to Improve Efficiency in the Municipal Regional Permit, Including Elimination of "Less Beneficial Tasks"

	Provision	Task or Requirement	Requested Adjustments
C.2.f. – Martinez #18 – STL	C.2.f.	Corporation Yard inspection requirements.	Eliminate this requirement, as it duplicates the requirements for inspections already included i the Stormwater Pollution Prevention Plans (SWPPPs) for these same facilities.
C.3.b.i. – Martinez #19 – STL	C.3.b.i.	Eliminates grandfathering of Regulated Projects with vested tentative maps approved prior to advent of C.3 requirements	Allow municipalities flexibility to require these applicants to implement stormwater treatment requirements only to the extent not in conflict w state law and existing development agreement
C.3.b.ii.(4) – Martinez #20 – STL	C.3.b.ii.(4)	Certain Roads Projects are Regulated Projects under Provision C.3	Delete this requirement as the intent is superse by the Green Infrastructure requirements in Provision C.3.j.
C.3.b.ii.(1)(c) – Martinez #21 – STL	C.3.b.ii.(1)(c)	Requires projects where 50% or more of existing impervious area is redeveloped to provide treatment for entire area.	Delete this requirement as the intent is superse by the Green Infrastructure requirements in Provision C.3.j.
C.3.e.ii. – Martinez #22 – STL	C.3.e.ii.	Special Projects—allowance to use non-LID treatment on smart growth development projects that meet specified location and gross density criteria.	To avoid a disincentive for including pedestrian amenities, allow public plazas to be omitted fro calculation of project gross density.
C.3.e.v.(1) – Martinez #23 – STL	C.3.e.v.(1)	Requires Permittees to track Special Projects that have been identified (application submitted) but not approved.	Delete this requirement, as the number of proje and amount of impervious area, has proven to small.
C.3.e.v.(2) – Martinez #24 – STL	C.3.e.v.(2)	Requires Permittees to conduct and document an analysis of the feasibility of LID treatment for Special Projects.	Delete this requirement, as it creates considera additional effort for applicants and Permittees without any expected water-quality benefit.
C.3.g.vii. – Martinez #25 – STL	C.3.g.vii.	Requires Contra Costa municipalities (through CCCWP) to submit a technical report describing how Contra Costa will implement current Permit hydromodification management requirements.	Delete requirement to submit a technical report CCCWP submitted a 2013 report on the results a multi-year monitoring study that concluded current policies and criteria meet these requirements.

	Provision	Task or Requirement	Requested Adjustments
C.3.g.iv. – Martinez #26 – STL	C.3.g.iv.	Allows Permittees to propose a different method for sizing hydromodification management facilities that is not biased against Low Impact Development, but requires a Permit amendment before using the method.	Delete requirement for a Permit amendment be the method is used. Note: the Fact Sheet accompanying the Tentative Order states that Water Board Executive Officer approval would required, not a Permit amendment.
C.3.h.ii.(6)(b)-(c) – Martinez #27 – STL	C.3.h.ii.(6)(b) and (c)	Requires Permittees to inspect 20% of Regulated Projects annually, as well as every project at least once every 5 years.	Delete the annual requirement to allow flexibilit scheduling inspections.
C.3.j.i.(1) – Martinez #28 – STL	C.3.j.i.(1)	Requires each Permittee to prepare and implement a Green Infrastructure Plan (framework for Plan due in 12 months; Plan due in 2019)	Extend the time for submittal of the required framework to a minimum of 20 months.
C.4., C.5., and C.6. – Martinez #29 – STL	C.4, C.5, C.6	For inspections of businesses and construction sites, and for response to illicit discharges, requires that corrective actions of "actual or potential non-stormwater discharges" be implemented before the next rain event, but no longer than 10 business days after potential or actual non-stormwater discharges are discovered.	Delete references that specify types of correcti actions and timeframes for implementation, as these create a disincentive for identifying minor problems and create unproductive administrati work.
C.5.e.iii. – Martinez #30 – STL	C.5.e.iii.	Requires Permittees to report a list of mobile cleaners operating in their jurisdiction.	Delete, as this information is unavailable.
C.5.e.iii. – Martinez #31 – STL	C.5.e.iii.	Requires Permittees to report a list and summary of specific outreach events and education conducted to the different types of mobile businesses	Delete and clarify that requirements to inspect mobile businesses and abate discharges is covered by existing requirements elsewhere in Provisions C.4 and C.5.
C.7.a. – Martinez #32 – STL	C.7.a.	Permittees are required to mark and maintain "no dumping" markings on storm drain inlets.	Move this task to Provision C.2.
C.7.b. – Martinez #33 – STL	C.7.b.	Requires Permittees to participate in or contribute to "advertising" campaigns on specified subjects and assess results.	Change "advertising" to "outreach" to make exp that a variety of methods, including social medi may be used. Delete references to specific subjects. Allow more flexibility.
C.9.c. – Martinez #34 – STL	C.9.c.	Requires Permittees to observe pesticide applications by their contractors.	Delete requirement.

	Provision	Task or Requirement	Requested Adjustments
C.10.a.i.a. – Martinez #35 – STL	C.10.a.i.a.	Requires Permittees to achieve a 70% load reduction by July 1, 2017	Extend this compliance date to 2018.
C.10.a.ii.b. – Martinez #36 – STL	C.10.a.ii.b.	Requires Permittees to ensure private properties plumbed directly to municipal storm drains are equipped with full trash capture devices or to verify "low" trash generation rate. Requires Permittees to investigate and map these properties.	Delete the mapping requirement and integrate inspections and enforcement into Provision C.4 (Commercial and Industrial Inspections).
C.10.b.1.a. – Martinez #37 – STL	C.10.b.1.a.	Specifies maintenance frequencies for full trash capture devices based on trash generation rates.	Set minimum frequency of 1x/year for all device to be adjusted based on maintenance experien Required maintenance frequency is determined mostly by amount of leaf litter and type of devic
C.10.b.1.c. – Martinez #38 – STL	C.10.b.1.c.	Requires Permittees to certify that full trash capture systems are maintained to meet standard.	State that systems are maintained, and maintenance program is designed to meet standard.
C.10.b.iv. – Martinez #39 – STL	C.10.b.iv.	Allows a credit of up to 5% toward trash reduction requirement for source control actions such as product bans.	Increase maximum to 20% to fully credit existin product bans and to create incentive for future source control actions.
C.10.e.i. – Martinez #40 – STL	C.10.e.i.	Creates a formula for crediting trash collected during additional creek and shoreline cleanups toward trash reduction requirement—at a 1:10 ratio, with a 5% maximum credit.	Make the ratio 1:3 and increase maximum cred 10%.
C.10.e. – Martinez #41 – STL	C.10.e.	Credits on-land cleanups and litter reduction only if visual assessments show a categorical change (e.g., from "very high" to "high" trash)	Allow interim credit for demonstrated actions intended to achieve categorical change.
C.10.a.iii. – Martinez #42 – STL	C.10.a.iii.	Requires bioretention facilities to be equipped with a screen to qualify as full-trash-capture facilities.	Specify that these facilities qualify as full trash capture. Screens could cause flooding.
C.10.b.iv. – Martinez #43 – STL	C.10.b.iv.	Requires observations of creeks and shorelines to determine whether trash control actions have prevented trash from discharging to receiving waters.	Restate purpose of observations, as it is not possible to determine that trash originated from storm drains.
C.10.e.ii. – Martinez #44 – STL	C.10.e.ii.	Provides 1:10 ratio up to 10% maximum credit for actions to reduce direct discharge of trash (e.g. dumping, encampments).	Increase ratio to 1:3, with no maximum, as in s locations this is the predominant source of trash

	Provision	Task or Requirement	Requested Adjustments
C.10.f.ii. – Martinez #45	C.10.f.ii.	Produce an updated trash generation map each year.	Tie updated maps to compliance dates (for 70% and 100%).

'Gown of ffioraga

MAYOR'S OFFICE

July 6, 2015

Bruce Wolfe, Executive Officer
California Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay Street
Oakland, CA 94612

Via email to: mrp.reissuance@waterboards.ca.gov

Subject: Opposition to the Tentative Order Reissuing the Municipal Regional Stormwater Permit (MRP 2.0)

Dear Mr. Wolfe and Members of the Board:

The Town of Moraga continues to support the Water Board's objectives of reducing stormwater pollution and protecting our local creeks, the delta and San Francisco Bay. However, we must take this opportunity to express our significant concerns about the MRP 2.0 as currently drafted.

General – Moraga – #1 – STL

We urge the Board to prioritize and consolidate less effective and less beneficial tasks so that small jurisdictions, like the Town of Moraga, can focus our limited resources where it matters most and is mutually beneficial to the regional and statewide effort.

General – Moraga – #2 – STL

Specifically, we are requesting the Board consolidate or eliminate less beneficial tasks in the permit; extend implementation dates so they become more practicable; reduce reporting requirements to enable jurisdictions to focus on action items; and adjust ongoing tasks to reduce effort while maintaining effectiveness in protecting water quality; as has been repeatedly expressed over the past two years by the Bay Area Stormwater Management Agencies Association (BASMAA).

The following are four issues we request you amend in the drafted MRP 2.0:

1. Improve Efficiencies, Extend Deadlines, and Remove Less Beneficial Tasks

We request that your staff review the attached table and work with Edric Kwan, Public Works Director, to make most or all of the recommended adjustments to "less beneficial tasks." The attached table summarizes adjustments that have been presented to Water Board staff that would improve program efficiencies or eliminate certain less beneficial tasks.

Comprehensive information and rationale has been presented to support these requests. Inclusion of these changes in the MRP 2.0 will allow the Town to focus and apply the Town's limited resources to the major new and expanded mandates as listed above, in order to achieve the greatest positive impact.

C.10. – Moraga – #3 – STL

2. Extend the Timeframe to Meet Trash Load Reduction Requirements.

The 70% load reduction by 2017 is too rigorous and should be extended to 2018. Within the last two years, the metrics to measure trash load reduction were significantly revamped by the Water Board with no time extension for compliance. Furthermore, as the percent load reduction increases, the reductions become increasingly difficult to attain and require additional time to implement effective measures.

The new MRP 2.0 would require allocating significant resources to all jurisdictions to demonstrate trash load reductions of 70% from 2009 levels-up from the current 40% requirement-by installing full trash capture devices or implementing equivalent trash control measures and evaluating their effectiveness through visual surveys.

The MRP 2.0 would further require private property owners in high-trash and moderate-trash areas to install full trash capture devices or implement equivalent measures.

C.3. – Moraga – #4 – STL

3. Extend the Timeframe to Develop Green Infrastructure Plans.

The draft MRP 2.0 includes a new mandate to develop Green Infrastructure (GI) Plans. This multi-year effort to develop a comprehensive long-range plan to reduce the amounts of pollutants of concern flowing into our waterways will require significant investment.

The requirements to develop a Gl Framework and Plan will be major, resource-intensive efforts for which the Town has not budgeted and yet have deadlines within one and two years, respectively. Additional time is necessary for both tasks. Further, the mechanism to develop the Plan should include other tools less complex than GreenPlan-IT to keep local jurisdictional costs down.

C.12. – Moraga – #5 – STL

4. Provide a Clear Path of Compliance for PCBs.

Considerable time and effort has been spent discussing how to reduce levels of pollutants of concern flowing into our waterways, particularly PCBs. Failure to achieve the reductions specified in MRP 2.0 could result in our Town being held in noncompliance. We ask that the load reduction performance criteria not be the point of compliance, and that Water Board staff work with permittee representatives to revise the Draft Tentative Order so that it provides a clear and feasible pathway for permittees to attain compliance. Most factors that are key to meeting the load reduction performance criteria are uncertain and many are not within permittee control (e.g., extent of source properties that will be found, building demolition rates, and redevelopment rates), making achievement of compliance uncertain. Specifically,

- The draft Tentative Order mandates achieving specified reductions in the total quantity of PCBs discharged from municipal storm drains and sets as a default that the Town's share of the County load reduction performance criteria will be allocated by the proportion of Contra Costa County population.

The Town of Moraga urges your staff to develop permit requirements that are implementable and effective in improving surface water quality-a goal which we share. We look forward to resolution of the remaining issues and to implementing MRP 2.0.

Sincerely,

Roger N. Wykle

Roger N. Wykle
Mayor, Town of Moraga

Attachment

Requested Adjustments to Improve Efficiency in the Municipal Regional Permit, Including Elimination of "Less Beneficial Tasks"

	Provision	Task or Requirement	Requested Adjustments
C.2.f. – Moraga – #9 – STL	C.2.f.	Corporation Yard inspection requirements.	Eliminate this requirement, as it duplicates the requirements for inspections already included in the Stormwater Pollution Prevention Plans (SWPPPs) for these same facilities.
C.3.b.i. – Moraga – #10 – STL	C.3.b.i.	Eliminates grandfathering of Regulated Projects with vested tentative maps approved prior to advent of C.3 requirements	Allow municipalities flexibility to require these applicants to implement stormwater treatment requirements only to the extent not in conflict with state law and existing development agreements
C.3.b.ii.(4) – Moraga – #11 – STL	C.3.b.ii.(4)	Certain Roads Projects are Regulated Projects under Provision C.3	Delete this requirement as the intent is superseded by the Green Infrastructure requirements in Provision C.3.j.
C.3.b.ii.(1)(c) – Moraga – #12 – STL	C.3.b.ii.(1)(c)	Requires projects where 50% or more of existing impervious area is redeveloped to provide treatment for entire area.	Delete this requirement as the intent is superseded by the Green Infrastructure requirements in Provision C.3.j.
C.3.b.ii. – Moraga – #13 – STL	C.3.e.ii.	Special Projects-allowance to use non-LID treatment on smart growth development projects that meet specified location and gross density criteria.	To avoid a disincentive for including pedestrian amenities, allow public plazas to be omitted from calculation of project gross density.
C.3.e.v.(1) – Moraga – #14 – STL	C.3.e.v.(1)	Requires Permittees to track Special Projects that have been identified (application submitted) but not approved.	Delete this requirement, as the number of projects, and amount of impervious area, has proven to be small.
C.3.e.v.(2) – Moraga – #15 – STL	C.3.e.v.(2)	Requires Permittees to conduct and document an analysis of the feasibility of LID treatment for Special Projects.	Delete this requirement, as it creates considerable additional effort for applicants and Permittees without any expected water-quality benefit.
C.3.g.vii. – Moraga – #16 – STL	C.3.g.vii.	Requires Contra Costa municipalities (through CCCWP) to submit a technical report describing how Contra Costa will implement current Permit hydromodification management requirements.	Delete requirement to submit a technical report. CCCWP submitted a 2013 report on the results of a multi-year monitoring study that concluded current policies and criteria meet these requirements.

C.3.g.iv. – Moraga – #17 – STL	C.3.g.iv.	Allows Permittees to propose a different method for sizing hydromodification management facilities that is not biased against Low Impact Development, but requires a Permit amendment before using the method.	Delete requirement for a Permit amendment before the method is used. Note: the Fact Sheet accompanying the Tentative Order states that Water Board Executive Officer approval would be required, not a Permit amendment.
C.3.h.ii.(6)(b)-(c) – Moraga – #18 – STL	C.3.h.ii.(6)(b) and (c)	Requires Permittees to inspect 20% of Regulated Projects annually, as well as every project at least once every 5 years.	Delete the annual requirement to allow flexibility in scheduling inspections.

	Provision	Task or Requirement	Requested Adjustments
C.3.j.i.(1) – Moraga – #19 – STL	C.3.j.i.(1)	Requires each Permittee to prepare and implement a Green Infrastructure Plan (framework for Plan due in 12 months; Plan due in 2019)	Extend the time for submittal of the required framework to a mir of 20 months.
C.4, C.5, C.6. – Moraga – #20 – STL	C.4, C.5, C.6	For inspections of businesses and construction sites, and for response to illicit discharges, requires that corrective actions of "actual or potential non-stormwater discharges" be implemented before the next rain event, but no longer than 10 business days after potential or actual non-stormwater discharges are discovered.	Delete references that specify types of corrective actions and timeframes for implementation, as these create a disincentive fo identifying minor problems and create unproductive administrati work.
C.5.e.iii. – Moraga – #21 – STL	C.5.e.iii.	Requires Permittees to report a list of mobile cleaners operating in their jurisdiction.	Delete, as this information is unavailable.
C.5.e.iii. – Moraga – #22 – STL	C.5.e.iii.	Requires Permittees to report a list and summary of specific outreach events and education conducted to the different types of mobile businesses	Delete and clarify that requirements to inspect mobile businesse abate discharges is covered by existing requirements elsewhere Provisions C.4 and C.5.
C.7.a. – Moraga – #23 – STL	C.7.a.	Permittees are required to mark and maintain "no dumping" markings on storm drain inlets.	Move this task to Provision C.2.
C.7.b. – Moraga – #24 – STL	C.7.b.	Requires Permittees to participate in or contribute to "advertising" campaigns on specified subjects and assess results.	Change "advertising" to "outreach" to make explicit that a variety methods, including social media, may be used. Delete reference specific subjects. Allow more flexibility.
C.9.c. – Moraga – #25 – STL	C.9.c.	Requires Permittees to observe pesticide applications by their contractors.	Delete requirement.
C.10.a.i.a. – Moraga – #26 – STL	C.10.a.i.a.	Requires Permittees to achieve a 70% load reduction by July 1, 2017	Extend this compliance date to 2018.

	Provision	Task or Requirement	Requested Adjustments
C.10.a.ii.b. – Moraga – #27 – STL	C.1O.a.ii.b.	Requires Permittees to ensure private properties plumbed directly to municipal storm drains are equipped with full trash capture devices or to verify "low" trash generation rate. Requires Permittees to investigate and map these properties.	Delete the mapping requirement and integrate inspections ar enforcement into Provision C.4 (Commercial and Industrial Inspections)
C.10.b.1.a. – Moraga – #28 – STL	C.10.b.1.a	Specifies maintenance frequencies for full trash capture devices based on trash generation rates.	Set minimum frequency of 1x/year for all devices, to be adjusted based on maintenance experience. Required maintenance frequency is determined mostly by amount of leaf litter and typ of device.
C.10.b.1.c. – Moraga – #29 – STL	C.1O.b.1.c.	Requires Permittees to certify that full trash capture systems are maintained to meet standard.	State that systems are maintained, and maintenance program designed to meet standard.
C.10.b.iv. – Moraga – #30 – STL	C.10.b.iv.	Allows a credit of up to 5% toward trash reduction requirement for source control actions such as product bans.	Increase maximum to 20% to fully credit existing product ban create incentive for future source control actions.
C.10.e.i. – Moraga – #31 – STL	C.10.e.i.	Creates a formula for crediting trash collected during additional creek and shoreline cleanups toward trash reduction requirement-at a 1:10 ratio, with a 5% maximum credit.	Make the ratio 1:3 and increase maximum credit to 10%.
C.10.e. – Moraga – #32 – STL	C.10.e.	Credits on-land cleanups and litter reduction only if visual assessments show a categorical change (e.g., from "very high" to "high" trash)	Allow interim credit for demonstrated actions intended to achi categorical change.
C.10.a.iii. – Moraga – #33 – STL	C.10.a.iii.	Requires bioretention facilities to be equipped with a screen to qualify as full-trash-capture facilities.	Specify that these facilities qualify as full trash capture. Scree cause flooding.
C.10.b.iv. – Moraga – #34 – STL	C.10.b.iv.	Requires observations of creeks and shorelines to determine whether trash control actions have prevented trash from discharging to receiving waters.	Restate purpose of observations, as it is not possible to deter trash originated from storm drains.
C.10.e.ii. – Moraga – #35 – STL	C.10.e.ii.	Provides 1:10 ratio up to 10% maximum credit for actions to reduce direct discharge of trash (e.g. dumping, encampments).	Increase ratio to 1:3, with no maximum, as in some locations predominant source of trash.
C.10.f.ii. – Moraga – #36 – STL	C.10.f.ii.	Produce an updated trash generation map each year.	Tie updated maps to compliance dates (for 70% and 100%).

CITY OF MOUNTAIN VIEW

Fire Department • Fire and Environmental Protection Division
500 Castro Street • City Hall • 4th Floor • Mountain View, California 94041-2010
650-903-6378 • FAX 650-903-6101

July 10, 2015

Mr. Bruce Wolfe-Executive Officer
San Francisco Bay Regional Water Quality Conb'O! Board
1515 Clay Street, No. 1400
Oakland, CA 94612

MUNICIPAL REGIONAL STORMWATER NPDES PERMIT FORMAL COMMENT SUBMITTAL

Dear Mr. Wolfe:

Thank you for the opportunity to review and submit comments on the Tentative Order for the San Francisco Bay Region Municipal Regional Stormwater NPDES Permit (Municipal Regional Permit), which was reissued by the San Francisco Bay Regional Water Quality Control Board (Regional Water Board) on May 11, 2015. The purpose of this letter is to submit the City of Mountain View's (City's) formal comments in accordance with the Regional Water Board's "Notice of Public Workshop Hearing and Public Comment Period." The City appreciates efforts by Regional Water Board staff, Bay Area Stormwater Management Agencies Association (BASMAA), the six Bay Area stormwater programs, as well as the individual co-permittees, to develop the reissued Municipal Regional Permit.

The City also appreciates Regional Water Board staff's willingness to incorporate many of the suggestions made by the co-permittees during the informal process to develop the reissued Municipal Regional Permit. While progress was made on many of the issues, the City does have some remaining concerns.

General – Support SCVURPPP Comments – Mountain View #1 – SKM

The City supports the comments provided in the Santa Clara Valley Urban Runoff Pollution Prevention Program's Municipal Regional Permit comment letter dated July 10, 2015. The highest priority items for the City are listed below:

Municipal Regional Permit Provision Comments

C.3. New Development and Redevelopment

C.3.e.ii.(4)(b) – Mountain View #2 – SKM

C.3.e.ii. Special Projects

The Special Projects criteria for LID treatment reduction credits include criteria for density expressed as floor area ratio (FAR)' or dwelling units (DU) per acre. Both criteria are

[1] Floor area ratio is defined (in the Tentative Order) as the ratio of the total floor area on all floors of all buildings at a project site (except structures, floors, or floor areas dedicated to parking) to the total project area.

computed based on the size of the project site. The current permit allows jurisdictions to define FAR and calculate DU/acre consistent with their standard practices. MRP 2.0 prescribes specific definitions for each and requires that they be computed based on the total area of the site (e.g., DU/acre based on gross density[2]). The Permittees requested changes to the definitions as part of early input on the Administrative Draft and the changes were not incorporated.

- Issue: The definition proposed in the Tentative Order (TO) is counter to professional land use planning standards and should be revised to exclude public rights-of-way. Using gross density as defined in the TO will result in a lower density value that may prevent some valuable high-density projects from qualifying for LID treatment reduction credits. Similarly, Permittees would like to exclude public rights-of-way and public plaza areas from the computation of FAR. Open space areas, such as plazas and parks, are an important aspect of creating livable high-density development projects. Excluding these public areas from the density calculations will provide flexibility to comply with the stormwater treatment requirement and fulfills the intent of the Special Project LID reduction credit provision.

  Requested Revision: Change the definitions of FAR and gross density to exclude public plazas, public rights-of-way, and civic areas.

C.3.h.ii.(7) – Mountain View #3 – SKM

C.3.h. Operation and Maintenance of Stormwater Treatment Systems

- Issue: C.3.h.ii.(7) contains requirements for Operation and Maintenance (O&M) Enforcement Response Plans. Section (c) requires that corrective actions for identified O&M problems with pervious pavement, treatment, and HM systems be implemented within 30 days of identification, and if more than 30 days are required, a rationale must be recorded in the Permittee's inspection tracking database. The process of contacting and educating the property owner, allowing the property owner to arrange for maintenance work to be completed, and following up with a reinspection typically takes more than 30 days. In Phase I Manager's early input on the Administrative Draft, a correction period of 90 days was requested, consistent with current practice by some Permittees and some existing maintenance agreements.

  Requested Revision: Allow 90 days for completion of permanent corrective actions.

C.3.j. – Mountain View #4 – SKM

C.3.j. Green Infrastructure Planning and Implementation

This provision will be one of the most challenging portions of C.3. to implement and has a significant level of uncertainty in terms of what will constitute compliance. It also appears

[2] Gross density is defined (in the TO) as the total number of residential units divided by the acreage of the entire site area, including land occupied by public rights-of-way, recreational, civic, commercial, and other nonresidential uses.

that the level of effort and resources required to implement Provision C.3. could be dramatically higher than implementing MRP 1.0 due to the new Green Infrastructure (GI) requirements.

C.3.j.i.(1) – Mountain View #5 – SKM

Provision C.3.j.i. requires each Permittee to develop a GI Plan. The GI Plan must include: mechanism to prioritize and map potential GI project areas; maps and lists generated by this mechanism for implementation within 2, 7, and 12 years of the permit effective date; targets for amounts of retrofitted impervious surface within 2, 7, 12, 27, and 52 years; tracking and mapping of installed GI systems; streetscape design and construction details and standards; a list of updates and modifications to existing related Permittee planning documents; and reporting on all of the above elements. Permittees must also prepare and submit annually a list of planned and potential GI projects, based on a review of capital improvement projects, and a summary of how each project will include GI to the maximum extent practicable or why it was impracticable to implement GI.

- Issue: The language in Provision C.3.j. needs to be more consistent with the expectations in Provisions C.ll. and C.12. for achieving PCB and mercury load reductions with GI. Discussions with Regional Water Board staff on C.ll. and C.12. have suggested that load reductions can be accomplished by private development and redevelopment, whereas C.3.j. only refers to public retrofits.

  Requested Revision: Make more explicit in C.3.j. (as well as in C.ll./12.) that private development and redevelopment as well as public projects will count toward meeting PCB and mercury load reductions.

C.3.j.i.(1) – Mountain View #6 – SKM

- Issue: Because developing a comprehensive GI Plan will take time and significant resources, and the time frames in the TO for completion of the Plan are unrealistic. For example, the framework for the GI Plan has to be developed and approved by local governing bodies or city/county managers within one year of the permit effective date. This is a very short time frame given the effort required to coordinate and educate internal departments, educate upper-level staff and elected officials, prepare the framework, conduct resource planning, and accommodate lead times for bringing the framework to governing bodies. Additionally, the GI Plan must be completed and submitted with the 2019 Annual Report (3-'/2 years from the expected permit effective date). Completing a GI Plan will be a complex and time-intensive process which will require a great deal of municipal interdepartmental coordination and resources. Prioritization and mapping of potential and planned projects may not be able to be completed within 2 years of the permit effective date.

  Requested Revision: Provide 2 years to complete and obtain governing body approval of the GI framework. Provide the entire permit term to complete the GI Plan. Eliminate the 2-year deadline to complete prioritization and mapping and begin implementation of planned/potential projects (before the GI Plan is completed), and include these efforts in the GI Plan development period. Implementation should begin after the GI Plan is completed.

C.3.j.i.(1) – Mountain View #7 – SKM

- Issue: Prioritization and mapping of potential and planned projects will be a major resource-intensive effort, especially for those smaller jurisdictions that do not have GIS data layers already available. Additional flexibility in approaches to mapping and prioritization is needed. In addition, the time intervals for planning should be aligned with fiscal years and made consistent with the time intervals for load reductions in C.11./12.

  Requested Revision: The mechanisms used to develop the GI Plan and priorities should include other less-complex tools in addition to the GreenPlan-IT tool. The time intervals should be changed to Fiscal Year 2019-20, Fiscal Year 2024-25, and Fiscal Year 2029-30 (to align with C.11./12.load reduction reporting intervals of 2020 and 2030).

C.3.j.i.(1)(c) – Mountain View #8 – SKM

- Issue: Provision C.3.j.i.(1)(c) requires GI Plans to include "targets for the amount of impervious surface within the Permittee's jurisdiction to be retrofitted" within 2, 7, 12, 27, and 52 years of the permit effective date. It is unclear how these "targets" are to be established by each Permittee. In addition, the time frames for establishing "targets" (we would prefer the term "projections") for the amount of impervious surface reb·ofitted do not line up with the C.11./12. load reduction time frames, making it difficult to calculate projected load reductions.

  Requested Revision: Allow the development of "projections" instead of "targets," and allow Permittees to include projected private development as well as public projects. Allow projections to be developed for the years 2020, 2030, 2040, and 2065, consistent with C.11./12. and with other municipal planning documents.

C.3.j.ii. – Mountain View #9 – SKM

- Issue: Provision C.3.j.ii. requires early implementation of Gl, focused on identifying and implementing public projects that have potential for GI measures (including LID treatment) within the permit term. It is unclear how compliance with this section will be determined. The process for review of planned capital projects needs to be more defined and objective in order to avoid disagreements with Regional Water Board staff as to what are "missed opportunities." There also needs to be the recognition that while it may be technically feasible to add LID features to a capital project, the funding for the additional features and the ongoing maintenance of the LID features may not be available. Implementation (i.e., design and construction) during the permit term of GI projects that are not already planned and funded will be very challenging for most Permittees.

  Requested Revision: Efforts during the MRP 2.0 term should focus on development of long-term GI Plans and opportunistic implementation of GI projects where feasible and where funding is available. Add the following language (proposed by the Permittees as early input to the Adminisb·ative Draft Permit) that would allow for consistent review of capital projects for GI opportunities, based on specified criteria:

"Permittees shall review and analyze appropriate projects within the Permittee's capital improvement program, and for each project, assess the opportunities and associated costs of incorporating LID into the project. The analysis shall consider factors such as grading and drainage, pollutant loading associated with adjacent land uses, uses of available space with the project area, condition of existing infrastructure, opportunities to achieve multiple benefits such as providing aesthetic and recreational resources, and potential availability of incremental funding to support LID elements along with other relevant factors. Permittees will collectively evaluate and develop guidance on the criteria for determining practicability of incorporating green infrastructure measures into planned projects."

C.lO. Trash Load Reduction

C.lO.a.i. Trash Reduction Requirement Schedule

C.10.a.i. – Mountain View #10 – SKM

- Issue: Reductions become increasingly more challenging the closer Permittees move toward the trash reduction goal of "no adverse impacts." Provision C.10.a.i (Schedule) requires a 70 percent load reduction by 2017. This schedule is too rigorous and should be extended to allow for more time to develop/ implement sustainable control measures. Most of the areas remaining to address are moderate trash-generating areas and will likely require more innovative controls that will have to be piloted.

  Requested Revision: We request that the 70 percent load reduction time schedule, set for 2017 in the TO, be extended at least to 2018.

C.10.a.ii. – Mountain View #11 – SKM

- Issue: A current development trend is to construct buildings above underground parking lots. In general, parking lots seem to be trash source areas. Since the underground parking lot areas for this type of development are not connected to the storm drain system, and exposed impervious areas above the surface drain to treatment controls such as biotreatment basins or planters, the risk of trash discharging to the storm drain system is low.

- Request for Consideration: Since development projects with buildings constructed above underground parking garages do not pose a risk for trash to discharge to the storm drain system, the project areas should be considered "low" trash-generation areas on the Trash Generation Rate Maps.

C.10.b.in. – Mountain View #12 – SKM

C.lO.b.iv. Source Controls

The most important actions that can be taken by Permittees are those that eliminate the generation of litter-prone items in perpetuity. Bay Area Permittees have been national leaders on taking actions to eliminate the sale or distribution of litter-prone items. Nearly every Permittee in the Bay Area has adopted an ordinance focused on eliminating certain

types of trash in our creeks and the Bay. These actions took significant political support and public resources, and were done in partnership with environmental nongovernmental organizations (NGOs).

- Issue: Permittees to date have focused on instituting a number of different types of source control actions. Data collected by Permittees indicated that each individual action reduces between 5 percent and 10 percent of the trash found in stormwater on average. These reductions are likely not observed by visual assessment protocols because they are only precise enough to detect reductions greater than 25 percent. Therefore, without a specific reduction value for source controls, reductions associated with these actions may never be valued.

  The maximum of 5 percent reduction for all source conh·ol actions is arbitrary and inconsistent with our current knowledge of the percentage of trash in stormwater comprised of specific litter-prone items associated with source control actions. The programs put into place to address these litter-prone items are effective and directly impact stormwater quality.

  Requested Revision: We request that the TO be revised to increase the maximum reduction value for all source control actions combined to 25 percent. Supporting evidence would be required to claim reductions associated with source controls.

C.10.b.v. – Mountain View #13 – SKM

C.10.b.v. Receiving Water Observations

- Issue: The TO requires the Permittees to conduct receiving water observations downstream from trash-generation areas converted to "low" trash generation. By requiring Permittees to focus on areas downstream of conh·ol actions, it appears that receiving water observations could be used to judge compliance with reductions associated with municipal stormwater. This is confusing because the process to judge compliance with stormwater reductions is outlined in the TO as full capture, visual assessments, source control values, and offsets associated with cleanups.

  Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP) Permittees recognize and have interest in developing an ambient monitoring program that would continue to evaluate trash conditions or levels in local creeks and rivers using a cost-effective and practical protocol. This protocol, however, has not yet been developed.

  Requested Revision: We request that the TO language be revised to state that purpose of receiving water observations is "…to evaluate the level of trash present in receiving waters over time, and to the extent possible, determine whether there are ongoing sources outside of the Permittee's jurisdiction (e.g., State and Federal facilities) that are causing or contributing to adverse trash impacts in the receiving water(s)." Additionally, we are willing to be a partner with the Regional Water

Board and NGOs in developing and pilot testing a protocol during the permit term to achieve this purpose.

C.10.e.i. – Mountain View #14 – SKM

C.lO.e.i. Optional Trash Load Reduction Offset Opportunities-Creek and Shoreline Cleanups

Creek and shoreline cleanups are important actions that promote community involvement, create awareness of trash issues, and improve water quality. These actions have water-quality value, are supported by the community and environmental NGOs, and should be accounted for accordingly in the load reduction accounting method.

- Issue: While SCVURPPP Permittees appreciate the inclusion of load reduction benefits associated with creek and shoreline cleanups, the 5 percent maximum offset for these important actions is too small and inconsistent with the environmental benefit. Additionally, the arbitrary 10:1 ratio of trash removed to offset value is too large and undervalues the benefits of these actions.

  The requirement for a minimum cleanup frequency of 2x/year at each specific site creates inflexibility and is too constraining. Some Permittees may choose to cleanup many sites 1x/year rather than a small number of sites 2x/year. What is important is that trash is being removed from creeks and shorelines, not how many times at a specific site.

  Requested Revision: We request that the TO be revised to:

  Increase the maximum offset for creek and shoreline cleanups to 10 percent;
  Reduce the ratio of trash removed to reduction value to 3:1, similar to other types of mitigation programs; and
  Remove the requirement that a site be cleaned up at least 2x/ year before claiming an offset.

C.10.e.ii. – Mountain View #15 – SKM

C.lO.e.i. Optional Trash Load Reduction Offset Opportunities-Direct Discharge Trash Controls

This offset is intended to address trash impacts associated with nonstormwater pathways to creeks and rivers such as illegal dumping directly into water bodies. These pathways directly impact water bodies and at some sites serve as the dominant source of trash. Programs that address trash from direct discharges should be accounted for accordingly in the load reduction accounting method.

- Issue: While SCVURPPP Permittees appreciate the inclusion of load reduction benefits associated with direct dumping, the 10 percent maximum offset for these important programs is too low and inconsistent with the environmental benefit of these programs. Additionally, the arbitrary 10:1 ratio of trash removed to offset value is too large and undervalues the benefits of these actions. Lastly, Permittees

may identify direct discharges as an important source of trash to receiving waters after 2016, and therefore the 2016 Annual Report should not be the only time when Permittees can submit a plan to address these sources.

Requested Revision: We request that the TO be revised to:

Increase the maximum offset for programs addressing direct discharges to 25 percent;
Reduce the ratio of trash removed to reduction value to 3:1, similar to other types of mitigation programs; and
Allow for submittals of plans to conb·ol direct discharges identified after 2016.

C.11.a-c. – Mountain View #16 – SKM

C.ll. Mercury Controls

Provisions C.ll.a. – c. in the TO generally parallel C.12.a. – c. Therefore, the below comments on those provisions for C.12. (PCB Controls) also generally apply to C.ll. (Mercury Controls).

C.12. PCB Controls

C.12.a. – Mountain View #17 – SKM

C.12.a. Implement Control Measures to Achieve Load Reductions

The TO appears to require Permittees to reduce PCB loads to the Bay by 3 kilograms/year by the end of the permit term. The approach includes developing an accounting system for Executive Officer approval early in the permit term that would form the basis for the load reductions credited to the various PCB controls.

- Issue: There is a lack of a clear and feasible pathway for Permittees to attain compliance with the load reduction requirements. Most factors that would be key to meeting the criteria are uncertain and many are not within Permittee control (e.g., extent of source properties that will be found, building demolition rates, and redevelopment rates), making achievement of compliance uncertain.

  Requested Revision: Load reduction performance criteria should not be the point of compliance. Compliance should be based upon implementing PCB control programs designed to achieve a load reduction target (such as a Numeric Action Level or similar mechanism for triggering requirements for additional action and reporting), based on an interim accounting method (see next section). The target would be informed by what the Best Management Practices (BMP) programs could achieve, based on the accounting system, which would be agreed upon upfront and incorporated into the permit.

C.12.a.iii. – Mountain View #18 – SKM

- Issue: Several reporting requirements in Provision C.12.a. are unrealistic:

  Provision C.l2.a.iii.(1)-February 1, 2016 report providing"a list of watersheds (or portions therein) where PCB control measures are currently being

implemented and those in which control measures will be implemented (C.12.a.ii.(1)) during the term of this permit as well as the monitoring data and other information used to select the watersheds."

Provision C.12.a.iii.(2)-2016 Annual Report providing "the specific control measures (C.12.a.ii.(2)) that are currently being implemented and those that will be implemented in watersheds identified under C.12.a.iii.(1) and an implementation schedule (C.12.a.ii.(3)) for these control measures. This report shall include: ... [scope, start dates, progress milestones, schedules, roles and responsibilities of Permittees, etc.…]...."

Requested Revision: Extend the deadlines for the above reports to the 2017 Annual Report.

C.12.a. – Mountain View #19 – SKM

- Issue: Significant efforts have been made to date by Permittees and through the Regional Monitoring Program (RMP) to better understand the distribution of PCBs and mercury in watersheds. PCB hot spots are generally associated with older (pre-1980) indusb·ial areas and other areas where PCBs were used, transported, or managed during the early to mid 20th Century. Reductions in the permit are assigned to County Stormwater Programs based on population. PCBs are not directly associated with population. Rather, they are associated with areas where thPy were 11sed, transportPd, or otherwise manae;Pd.

  Alfuough the population of Santa Clara County is equal to or larger fuan the other tlu·ee main counties included in fue MRP, based on over a thousand sediment and water samples analyzed Baywide, PCBs are not as abundant in the Santa Clara Valley as some other areas. Low levels in the Southern Bay Area are likely due to tl1e limited amount of older industrial areas and the fact tl1at development largely occurred after PCBs were phased out of production.

  Requested Revision: If a load reduction target (as a Numeric Action Level) is retained in the permit, Regional Water Board staff should use a better metric than population to allocate load reduction responsibilities, such as the amount of older industrial areas currently present in each county, and accounting for old indusb·ial areas that have been redeveloped. This revision would more closely correlate wifu our current understanding of the distribution of these contaminants in watersheds and more equitably distribute compliance responsibility among different counties and Permittees.

C.12.b.i. – Mountain View #20 – SKM

C.12.b. Assess Load Reductions from Stormwater

SCVURPPP, other stormwater programs, and Regional Water Board staff recently worked together to develop an interim accounting method. It was intended to provide a basis for stipulated load reduction benefits for implementation of the primary PCB control programs tl1at Permittees anticipate implementing during fue MRP 2.0 permit term (this interim accounting mefuod would be revised before fue next permit term). SCVURPPP

appreciates that Regional Water Board staff included much of the information developed for the interim accounting method in the fact sheet.

- Issue: Values for certain key accounting parameters for managing PCB-containing materials and wastes during building demolition activities were left out.

  Requested Revision: Include in the interim accounting method values for all parameters to allow for scrutiny during the public permit review process, given the uncertainty in these values. It is especially important to include values for all pammeters associated with managing PCB-containing materials and wastes during building demolition activities, including the fraction of PCBs mass in a building that enters the MS4 during demolition in the absence of enhanced controls, which is particularly uncertain. Stormwater programs can also provide similar values for mercury to include in the fact sheet as well.

C.12.c.iii. – Mountain View #21 – SKM

- Issue: Requirement to formally submit load reduction assessment methodology early in the permit term for Executive Officer approval creates uncertainty in the load reduction benefit for each PCB control program.

  Requested Revision: Omit the requirement to submit load reduction accounting method early in the permit term. Instead, the interim accounting method should be finalized, incorporated into the permit. and then used to calculate PCB load reductions during Permittee annual reporting.

C.12.a.ii.&b.ii. – Mountain View #22 – SKM

- Issue: Regional Water Board staff has acknowledged that load reduction performance criteria are not numeric effluent limits. This should be made clear in the permit. In addition, further clarity is needed regarding the legal definition of the performance criteria and implications with regard to enforcement and potential third-party lawsuits.

  Requested Revision: PCB load reduction performance criteria should be in the form of Numeric Action Levels or a similar mechanism for triggering requirements for additional action and reporting. In addition, the permit should include contingency language that would allow for achieving compliance if a good faith demonstration of efforts and actions by Permittees consistent with permit requirements falls short of achieving the load reduction performance criteria.

C.12.b.iii. – Mountain View #23 – SKM

- Issue: Provision C.12.b.iii. requires that Permittees submit Permittee-specific proportions of load reduction responsibilities and supporting data to the Regional Water Board by April 1, 2016-four months after the effective date of the permit. Although Permittees and the RMP have spent considerable time and resources toward identifying PCB hot spots and watersheds producing greater levels of PCBs to the Bay, data has not been collected at a level to which proportions of load reduction responsibilities could confidently be assigned to Permittees. Furthermore, assigning Permittee-specific responsibilities with high levels of uncertainty upon which compliance could be based is not good public policy and could inadvertently

unduly place responsibilities upon certain Permittees reqmrmg the spending of public resources toward fictitious goals not based in reality.

Requested Revision: Delete the requirement to develop and submit Permittee-specific proportions of load reduction responsibilities.

C.12.c. – Mountain View #24 – SKM

C.12.c. Plan and Implement Green Infrastructure to Reduce PCBs Loads

Provision C.12.c. of the TO requires Permittees to implement GI projects during the term of the permit to achieve PCB load reductions of 120 grams/year over the final three years of the permit term. Additionally, Permittees are required to prepare a reasonable assurance analysis to demonstrate quantitatively that PCB load reductions of at least 3 kilograms/ year throughout the permit area will be achieved by 2040 through implementation of GI plans required by Provision C.3.j.

- Issue: It is unnecessary to include performance criteria for PCB load reductions through implementation of GI over the reissued permit term. PCB load reductions will not be the driver for GI implementation during the reissued permit term. Regional Water Board staff has noted that based on extrapolation of data from the current permit term, the proposed meh·ics should be met via redevelopment in old indusb·ial areas. Thus, the proposed criteria would not influence GI implementation during the reissued pennll lerm and meeting them would instead be dependent upon an activity that is not under Permittee's conb·ol. While we expect to learn valuable lessons via opportunistic early implementation of GI retrofit projects through Provision C.3.j.ii., the pollutant load reductions associated with these retrofits implemented over MRP 2.0 is anticipated to be relatively small.

  Requested Revision: Provision C.12.c. should be deleted.

C.12.c. – Mountain View #25 – SKM

- Issue: It does not make sense to prejudge that PCB load reductions of at least 3 kilograms *j* year throughout the permit area should be achieved by 2040 through implementation of GI plans. The actual load reductions that Permittees expect to achieve via GI will be determined during the planning and reasonable assurance analysis required by Provision C.12.d., as part of planning for achieving the overall PCB TMDL allocations.

  Requested Revision: Provision C.12.c. should be deleted.

C.12.f. – Mountain View #26 – SKM

C.12.f. Manage PCB-containing Materials and Wastes During Building Demolition

Provision C.12.f. requires development of a program to manage PCBs in building materials and wastes during demolition. Given the large standing stock of PCBs known to be present in certain buildings in the Bay Area, there could potentially be significant benefits to implementing the proposed conb·ol program. However, we are not aware that any data exists regarding the amount of PCB-containing materials that are released to the

ground during demolition and then mobilized into the MS4 by urban runoff, making it challenging to project with any certainty the actual water quality benefit of the proposed control program. Cost-effectiveness relative to other PCB controls is also highly uncertain at this time.

- Issue: The various potential problems associated with PCBs in building materials (i.e., water quality, human exposure at the site, and disposal) should be addressed holistically on a Statewide or Federal basis rather than focusing on water quality controls in the Bay Area only. Meeting the TO's three-year time frame to develop a program to manage PCBs in building materials and wastes during demolition would likely require administration at the local level. This inappropriate and rushed approach would result in highly inefficient use of scarce public funds and likely be ineffective at comprehensively addressing the problems. It would also likely result in inconsistent programs across the Bay Area.

  Recommended Solution: Allow at a minimum the entire permit term for Permittees to work with the State, U.S. EPA, the building indush'Y, and other stakeholders to attempt to develop a comprehensive Statewide or Federal program analogous to current programs for asbestos and lead paint. Given the multiple environmental and public health issues in play, U.S. EPA should play a large role in development of this program.

C.15. Conditionally Exempted Discharges

C.15.b.. – Mountain View #27 – SKM

C.15.b. Conditionally Exempted Non-Stormwater Discharges

- Issue: There is no evidence in the record or otherwise available that suggests the Santa Clara program's existing conditionally exempt nonemergency planned and unplanned potable water discharge program is not effective, or that to continue to protect water quality, the co-permittees require regulation in an altemative manner through State Water Board Order WQ 2014-0194-DWQ (State NPDES Permit for Drinking Water System Discharges), which represents a second, separate, and as to their discharges, completely unnecessary NPDES permit. The State permit was, in fact, specifically amended prior to adoption to provide that drinking water system discharges which are or can be addressed through a municipal stormwater permit issued by a regional water board will be regulated in that manner so as to avoid a situation where a municipality has to obtain separate coverage under two permits and pay two separate permit fees or be on two separate reporting cycles.

  In responding to public comments, the State Water Board directed all regional water boards to continue to specify potable discharge requirements in municipal stormwater permits and, on a going-forward basis, it left it up to them as to how best to craft such requirements: "[The State Water Board] takes no position on provisions or requirements within specific permits for MS4 owners and operators who are also water purveyors and whose MS4 permits also authorize drinking water discharges.

Regional Water Boards adopting such permits *are charged with* determining appropriate requirements to protect water quality and address the needs of both the MS4 and drinking water discharges on a system-specific basis."

Requested Revision: The Regional Water Board should either restore Provisions C.15.b.iii. (1) and (2) from the current MRP or craft new subprovisions that would specify that "Potable water discharges that meet the Discharge Specifications set forth in Section *N.A* or the Multiple Uses or Beneficial Reuse terms set forth in Section VI of the Statewide General NPDES Permit for Drinking Water Systems Discharges, Order WQ 2014-0194-DWQ, shall be deemed to be conditionally exempt provided that the Permittees maintain records of these discharges, BMPs implemented, and any monitoring data collected."

General – Allow necessary time for strategic planning over this permit term – Mountain View #28 – SKM

The City of Mountain View is committed to continuing efforts to implement and improve its stormwater pollution prevention program in a strategic and cost-effective manner. Implementation of stormwater pollution programs and actions, and construction of stormwater pollution controls (Gl and trash controls, in particular) will have a significant burden on City resources. Careful planning and thoughtful decision making are important to ensure that the City's limited resources are directed to projects that will have the greatest water quality benefit. The City will evaluate potential funding mechanisms to pay for long-term improvements that are required in the Municipal Regional Permit. Revisions to the Municipal Regional Permit that allow necessary time for strategic planning over this permit term and looking ahead to future permits are critical to successful implementation.

The City appreciates your consideration of the comments and recommended revisions.

Sincerely,

Eric Anderson
Environmental Safety Coordinator

EA/3/FIR
151-07-10-151-E

cc: Mr. Adam Olivieri, SCVURPPP Program Manager

City Council

CM, PWD, COD, CSD, ACM, CA, FC (Interim)-Diaz, FM, APWD-Solomon

CITY OF OAKLAND

250 FRANK H. OGAWA PLAZA, 4TH FLOOR, OAKLAND, CALIFORNIA 94612

Public Works Department

(510) 238-3051
FAX (510) 238-6633
TOO (510) 238-7644

July 10,2015

Dr. Thomas Mumley
Assistant Executive Officer
San Francisco Regional Water Quality Control Board
1515 Clay St
Oakland, CA 94612

Transmitted via email: mrp.reissuance@waterboards.ca.gov

Dear Mr. Mumley,

The City of Oakland is filing written comments[1] on the proposed Municipal Regional Stormwater Permit (MRP 2.0) issued on May **11,** 2015 (NPDES CAS612008). These comments should be considered alongside comments submitted by the Alameda County Clean Water Program and Oakland's earlier comment letter submitted on March 26, 2015.

Thank you for the opportunity to submit these comments. The City of Oakland is committed to reducing stormwater pollution and takes pride in our strong inspection and enforcement programs, education and outreach programs, volunteer programs and our leadership in promoting source reduction and green infrastructure.

We have several concerns regarding the proposed MRP 2.0 requirements, specifically regulations for trash reduction and PCB reduction.

[1] 1t should be noted that these comments are provided solely to assist the Water Board's consideration of and potential reaction to concepts or language it may, in its discretion, elect to advance relative to the reissuance of the Municipal Regional Permit for stormwater discharges. **It** is not intended and should not be misconstrued as an offer to take on, or volunteer for, any potential permit requirement that represents a new program or higher level of service relative to the MRP or its predecessor permits.

C.10.a.i. – Oakland #1– STL

Section C.lO, Trash Load Reductions

1. Extend schedule for 70% and 100% Trash Reduction Targets to July 1, 2019 and July 1, 2025, respectively (C.1O.a.i)

   Change the milestone dates for trash reduction to make the Regional Board's MRP 2.0 permit compliance trash reduction timelines consistent with the Statewide Trash Amendment and Caltrans permit and will allow sufficient time for new program implementation.

   Coordinating the timelines with the State and Caltrans will promote needed partnerships, funding streams and program policy initiatives such as source reduction efforts, public education campaigns and enforcement policies.

C.10. – Oakland #2– STL

Extending timelines will allow sufficient time for new program implementation of initiatives that are still awaiting data collection. For example, even though Oakland has installed full trash capture devices covering over 900 acres additional full capture devices are increasingly infeasible and constrained. As a result, Oakland is looking into combining street sweeping with inlet devices. This modification to our street sweeping program is dependent on the results of the forth coming (December 2016) results of BASMAA's street sweeping study to see how effective street sweeping will be in reducing street litter. Also, changing the sweeping program requires significant lead time for City-wide route analysis, council approval, training drivers on new routes and parking restrictions notifications and resigning before implementation can begin.

C.10. – Oakland #3– STL

These short time frames with large trash reductions are also out of step with other new environmental requirements implementation timelines. For example, the recycling program (AB 939) which had a designated funding source, known volume amount, measurable sources and reductions provided a 12 year time frame for a 50% reduction. As a comparison, the MRP trash regulations have provided half the time frame for the same reduction but with no dedicated resources, indeterminate baseline and sources and tremendous measurement uncertainties.

C.10.b.iv. – Oakland #4– STL

2. Increase Source Reduction Offset to a Maximum of 15% (C.10.b.iv)

   The proposed 5% cap on source reduction creates a disincentive for cities to identify, plan and implement more sustainable trash reduction measures. Changing individual behavior with bag bans, polystyrene bans, smoking bans, etc. is the most effective and long-term way to reduce litter. More importantly, using source reduction to target individual items, such as Styrofoam, allows the City to target the pollutants that are the most detrimental to the marine environment. Often these efforts require significant resource investment and certainty of regulatory outcomes is necessary to gather the

political will to invest in these measures. Increasing the source reduction to 15% will incentivize permittees to move forward with more innovative approaches.

C.10.b.iv. – Oakland #5– STL

We disagree with RWQCB staff that a source reduction credit is "double-dipping." Product bans are implemented jurisdiction-wide and should be credited as such. It is unlikely that a product ban would be detected using the visual sidewalk assessments required in the permit. For example, Alameda County studied inlets pre- and post-product bans and quantitatively measured and verified an 8% reduction with implementation of a polystyrene ban and plastic bag ban. While it is apparent that plastic bags and restaurant Styrofoam take out containers are no longer a litter item found on streets, the visual assessment methodology with only four categories does not change a category from very high to high or moderate with an 8% reduction. Such smaller changes, implemented across the entire City (even in "green areas") provide multiple benefits and demonstrated trash reduction. A source reduction offset is the only method for accounting for that reduction.

C.10.b.v. – Oakland #6– STL

3. Remove Receiving Water Monitoring until Protocols are Established (C.10.b.v)

The permit provision requiring monitoring of receiving waters for trash should be modified to clarify that this monitoring effort is only for detecting trends in trash reduction and should include sufficient lead time and partnership framework support to develop region-wide metrics and protocols. For a monitoring program to provide useful and accurate information, it needs to be designed to answer specific management questions and have clear protocols. Neither permittees nor RWQCB staff have developed the management questions or designed the monitoring protocols. Implementation of this requirement will result in permittees spending limited trash reduction resources to gather inaccurate, indeterminate and non-comparable monitoring results. We recommend the Regional Board remove the receiving water monitoring requirement until clear monitoring protocols are developed and adopted.

C.10.a.ii.b. – Oakland #7– STL

4. Remove Requirement to Map Private Property Storm Drainage Pipes (C.lO.a.ii.b)

Mapping private storm drainage infrastructure is problematic as the infrastructure on private properties is unknown and not previously mapped or recorded. Oakland's inspection approach is a more cost-effective control measure. Oakland is using its stormwater inspection program to assess trash levels in commercial properties. The City is conducting inspections of restaurants, shopping malls, and other businesses with parking lots and areas where trash could collect. In FY 14/15 the City targeted over 300 businesses and assessed the level of trash generated from these sites. The City will continue to use its authority to require increased trash control on those properties with high and very high trash levels.

C.10.ii.b. – Oakland #8– STL

5. Visual Assessments should not be Required to Determine Compliance (C.10.ii.b)

Permit compliance is overly reliant on the visual assessment methodology. This methodology has not been vetted sufficiently to be used as a permit compliance tool: 1) The temporal and spatial variation is not well understood or quantified; 2) There is an element of subjectivity to the assessments that cannot be eliminated; 3) The definitions of generation rate categories (i.e., Very High, High, Moderate, and Low) are too broad to detect actual trash reductions in many cases; 4) How to account for variations from one assessment to the next has not been determined; and 5) Visual assessments are limited to targeted areas and overlook measuring jurisdiction-wide programs including:

- Removal of illegally dumped materials. The City has increased its removal of illegal dumping by 40% since 2009 and spends approximately $3 million per year on this program
- Implementation and promotion of reward system for information leading to illegal dumping source(s)
- Volunteer efforts -over 5000 clean-up events City wide
- Targeted trash assessment and enforcement of commercial properties
- Identifying and conducting enforcement of trash container overages
- Education programs

C.10.ii.b. – Oakland #9– STL

Additionally, conducting visual on-land assessments is time consuming; drawing staff and finite resources away from actual trash reduction efforts that directly improve water quality. Oakland has 6,500 street miles, 13,000 curb miles. Per the permit's 10% monitoring requirement and excluding low trash and full trash capture areas, Oakland may be required to visually assess up to 600 miles of streets up to four times per year. We estimate this could cost the City over $2 million per year just for visual assessments.

C.10.c.i. – Oakland #10– STL

6. The Cap on the Maximum Offset for Creek and Shoreline Clean-up should be Increased to 20% (C.1O.c.i)

Oakland's volunteer clean-up programs have grown 3000%. Most of Oakland's creeks are in Parks and the many Adopt-A-Park events (1900 events held in 2014) would not receive appropriate credit. An arbitrary cap of five percent does not reflect the trash reduction Oakland has achieved from its volunteer clean-ups. There appears to be no basis for assigning a 1% total reduction for every 10% of the Permittees annual baseline. This trash is directly impacting local waterways. However, the trash is often deposited along these waterways through mechanisms other than discharge from the municipal storm drain system. Cleanup efforts are often the most effective approach to reducing trash impacts to waterways, and these efforts should be encouraged. The maximum offset should be increased to at least 20%.

C.12.a. – Oakland #11– STL

Section C.12 Polychlorinated Biphenyls (PCBs) Controls

1. Compliance with PCB Load Reduction should be based on Implementation of Specified Control Measures (C.12.a)

As noted by Regional Board staff and Board members, the permit's numeric PCB reductions are based on uncertain, assumed load reductions for specific control measures which have not been sufficiently verified. Most of the BMPs evaluated during MRP 1 that were thought to achieve significant load reductions, such as enhanced street sweeping and drop inlet cleaning, and diversion of stormwater flows to sanitary sewers, turned out to have very limited load reduction benefits

C.12.a. – Oakland #12– STL

In addition, the PCB load reductions are based on factors outside of the permittees control such as the number of building demolitions and the responsiveness of agencies to remediate identified properties. Basing compliance on activities outside of permittees' control does not provide jurisdictions with a clear path to compliance.

C.12.a. – Oakland #13– STL

PCB load reductions are not required by the PCB TMDL. The TMDL Implementation Plan states that PCB reductions should be evaluated after 10 years (i.e., 2020). In 2020, after MRP 2 assessments have been completed, there will be a better understanding of what can be achieved through control measures and there will be updated load estimation methodologies. Load reduction targets could then be set at that time.

C.12.a. – Oakland #14– STL

The Regional Board should modify the permit to require PCB reductions only within permittees control and with known, quantified benefit. If the 3.0 kg/yr performance criterion for the permit term is retained, it should be explicitly stated in the form of an action level to avoid any confusion between the permit's performance metrics and effluent limits; clarifying this legal definition has important implications for enforcement. Alternatively, the permit should be revised to clarify that any permittee showing good faith through implementation of specific actions (as determined by the Regional Board's Executive Officer) will be considered in compliance with the permit..

C.12.b. – Oakland #15– STL

2. Extend Time Frame for Collecting, Documenting and Refining Load Reduction Estimates to April **1**, 2017 (C.12.b)

The permit requires that permittees devote substantive time and resources to assess and verify reduction amounts for all pollution prevention and control measures. Specifically the permit states: *"develop, document, and implement assessment methodology and data collection program ...of any and all pollution prevention, source reduction, and treatment control efforts"* and report by April 1, 2016 and then regularly throughout the permit term. Program implementation takes time as does the measurement and

assessment of the results. In addition, permittees will be coordinating within and between counties on assessment methods and the accuracy of these assessments is critical.

General Comment on Reporting Requirements

Streamline Reporting Requirements and Require Reporting Every Other Year.

The amount of information required in the annual reports has grown substantially. Preparation of these reports requires City staff to devote approximately 2000 hours per year to maintain, collect and assemble the data necessary for reporting. Below are some specific recommendations on reporting requirements that are burdensome and may provide little information:

C.3. – Oakland #16– STL

- Reporting on specific design elements for each C-3 project. Reporting requirements should be changed to require City to certify that all new development is C-3 compliant

C.10. – Oakland #17– STL

- Reporting on device type, total acreage treated, and amount of acreage for each trash generation level for each full trash capture device both City-wide and again by TMAs. We recommend modifying the report to request information on newly installed devices only and only once in the document

C.10. – Oakland #18– STL

- Permittees are required to report the dominant type of trash and the source of trash for each hot spot. These hot spots are at the bottom of watersheds draining thousands of acres. Repeatedly listing the sources draining to each hot spot is cumbersome and unnecessary. Studies and analyses already exist that characterize the dominant trash in our waterways. Asking permittees to collect and provide this information when it already exists diverts resources

C.10. and C.12. – Oakland #19– STL

- Permit requires annual reporting on the implementation and evaluation of trash and PCB control measures. We recommend a biennial reporting period (every other year) with a portion of the permittees reporting each year. This would allow a more thorough assessment by the RWQCB and give permittees more time to analyze and evaluate their control measures

General – Reporting – Oakland #20– STL

- We recommend that the RWQCB staff initiate a workgroup with permittees to identify opportunities to eliminate unnecessary reporting.

We urge the Regional Board to modify the permit to allow us to work together towards sustainable, quality of life water quality improvements by incentivizing important programs, basing compliance on proven methodologies and providing achievable timeframes.

Sincerely,

Lesley Estes, Manager
Watershed and Stormwater

cc:
Brooke A. Levin, Director, Oakland Public Works
Mike Neary, Assistant Director, Oakland Public Works
Sabrina B. Landreth, Oakland City Administrator
Jim Scanlin, ACCWP Program Manager
Bruce Wolfe, Dale Bowyer, Keith Lichten, Regional Water Quality Control Board
Luisa Valiela, US EPA

CITY of OAKLEY
A PLACE TO FAMILIES
WORTH WARRIORS

3231 Main Street
Oakley, CA 94561
925 625 7000 tel
925 625 9859 fax
www.ci.oakley.ca.us

July 7, 2015

California Regional Water Quality Control Board
San Francisco Bay Region
Attn: Bruce H. Wolfe, Executive Officer
1515 Clay Street, Suite 1400
Oakland, CA 94612

Via email to: mrp.reissuance@waterboards.ca.gov

Re: Opposition to the Tentative Order Reissuing the Municipal Regioual Stormwater Permit (MRP 2.0)

Dear Mr. Wolfe and Members of the Board:

The City of Oakley continues to support the Water Board's objectives of reducing stormwater pollution and protecting our local creeks, the Delta and San Francisco Bay. However, we would like take this opportunity to express our serious concerns regarding the Tentative Order and share how it will significantly impact our community.

General – Few Permittee ideas incorporated into permit– Oakley #1 - REL

For the past two years, representatives from Contra Costa municipalities, along with a consortium of Bay Area agencies and BASMAA, have been engaged in an ongoing dialogue with your staff regarding: experience gained and lessons learned from the current MRP; how to apply that experience toward maximizing the effectiveness of MRP 2.0; and, ensuring that the requirements contained in MRP 2.0 provide a clear path to compliance.

This process generated many new ideas and approaches that build upon experience gained and identify how to expand upon and enhance our stormwater pollution prevention efforts. It also advocated consolidating or eliminating "less beneficial tasks" in the permit extending implementation dates, reducing reporting, and adjusting ongoing tasks to reduce effort while maintaining effectiveness in protecting water quality.

This approach acknowledges the reality that new or additional funding sources required to implement the new and expanded requirements contained in MRP

2.0 have yet to be identified; and, advocates allocating limited resources in ways that would focus upon, and maximize effectiveness of the major new and expanded mandates.

Despite the extensive effort, few of these ideas were carried forward into MRP 2.0. Accordingly, the City of Oakley opposes MRP 2.0 as it is currently drafted and asks that your Board consider the following comments -- directing Water Board staff to work with permittees to revise the Tentative Order.

General – New mandates are expensive and difficult – Oakley #2 - REL

1) Major New and Expanded Mandates Should Be Offset by Eliminating Less Beneficial Tasks

The draft Tentative Order includes a new mandate to develop Green Infrastructure Plans. This coordinated, multi-year effort represents a significant paradigm shift toward developing comprehensive long range plans that will significantly reduce the amounts of urban runoff pollutants, including the pollutants of concern, flowing into receiving waters. It will also require significant investment on the part of all permittees.

In addition, the draft Tentative Order would require the City of Oakley to do the following:

- Assess each planned infrastructure project and add Green Infrastructure features where feasible;
- Plan and implement a program to manage PCB-containing materials in commercial and industrial structures constructed or remodeled between 1950 and 1980 at the time those structures are demolished;
- Demonstrate trash load reductions of 70% from 2009 levels- up from the current 40% requirement – by installing full trash capture devices or implementing equivalent trash control measures and evaluating their effectiveness through visual surveys; and
- Require private property owners in high-trash and moderate-trash areas to install full trash caph1re devices or implement equivalent measures.

These major new mandates will require a significant, sustained effort to implement WITHOUT any new or additional funding source.

The attached table summarizes adjustments that have been presented to Water Board staff that would improve program efficiencies or eliminate certain less

beneficial tasks. Comprehensive information and rationale has been presented to support these requests. Inclusion of these changes in the MRP 2.0 will allow the City to focus and apply the City's limited resources to the major new and expanded mandates, in order to achieve the greatest positive impact.

We request that your staff review the attached table and work with permittee representative to make most of all of the recommended adjustments to "less beneficial tasks." The following provisions are of most concern to the City of Oakley:

C.3 – Grandfathering regulated projects – Oakley #3 – REL

- *C.3.b.i. Eliminates grandfathering of Regulated Projects with vested teutative maps approved prior to advent of C.3 requirements*
  The City of Oakley has several entitled projects that have not been constructed. Implementing the C.3 requirements under MRP 2.0 for these projects would be difficult. We can only recommend implementation to the applicant, but would not be able to impose these requirements since they have gone through the approval and entitlement process. Imposing these new requirements would discourage construction of these projects. As a growing community, we hope to encourage development in our City and continue to work with our applicants on innovative solutions to reduce stormwater pollution.

C.3 - Concern about Green Infrastructure Plan– Oakley #4 - REL

- *C.3.j.i.(1) Requires each Permittee to prepare and implement a Green Infrastructure Plan*
  Developing a Green Infrastructure Plan to comply with the new permit would require an extensive amount of resources that the City of Oakley does not have. The timeframe of when this plan is expected to be implemented is too rigorous. We request that an achievable approach is taken and we will continue to work with staff to obtain realistic milestones.

We request that your staff review the attached table and work with Kevin Rohani, Public Works Director, to make most or all of the recommended adjustments to "less beneficial tasks."

C.12 - Pathway to compliance – demolition uncertainty – Oakley #5 – REL

2) Permittees Must Have a Clear Path to Compliance

Considerable time and effort has been spent discussing how to reduce levels of pollutants of concern flowing into our waterways, particularly PCBs. Failure to

achieve the reductions specified in MRP 2.0 could result in our City being held in noncompliance. However, as drafted, MRP 2.0 provides no clear path for permittees to avoid noncompliance. Some examples include:

- The draft Tentative Order mandates achieving specified reductions in the total quantity of PCBs discharged from municipal storm drains. A major means of achieving these reductions is through removal of PCBs during building demolitions. However, this fails to acknowledge that permittees have no control over timing of when properties redevelop. We ask that development of a program to control PCBs during building demolitions, rather than applying controls to as specified number of buildings demolished, should represent compliance with this requirement.

C.12 - Pathway to compliance – general – Oakley #6 – REL

- The Tentative Order includes (in the Fact Sheet) an incomplete method to achieve stipulated reduction credits for each building demolished with PCB controls, for each redeveloped site with new bioretention facilities, and for finding and abating concentrated sources of PCBs. Looking for hidden PCB sources is a good idea, but permittees can't guarantee that they will find them and be able to abate them. We ask that development of a program to systematically identify and review potential sources, and refer them to appropriate agencies for abatement, be the basis for credit toward compliance.

C.12 – Pathway to compliance - Finalize PCBs Accounting Scheme in Permit – Oakley #7 – REL

- The draft Tentative Order allows only four (4) months after Permit adoption for permittees to submit a more complete "measurement and estimation methodology and rationale" for stipulating PCB reduction credits. We ask that BASMAA's PCBs programs accounting methodology be finalized, incorporated into the permit, and then used to calculate PCBs load reductions during permittee annual reporting.

C.12 – Pathway to compliance - numeric load reduction criteria for permit compliance – Oakley #8 – REL

- Water Board staff has stated the threat of noncompliance is intended to strongly encourage permittees to find and abate hidden PCBs, and that Water Board staff would use "enforcement discretion" if and when permittees are unable to meet the mandated PCB load reductions. From a municipal government perspective, new financial and staffing commitments must be based on agreed upon goals and objectives, and have well-defined metrics for measuring progress. We ask that the

load reduction performance criteria not be the point of compliance, and that Water Board staff work with permittee representatives to revise the Draft Tentative Order so that it provides a clear and feasible pathway for permittees to attain compliance. Most factors that are key to meeting the load reduction performance criteria are uncertain and many are not within permittee control (e.g., extent of source properties that will be found, building demolition rates, and redevelopment rates), making achievement of compliance uncertain.

The City of Oakley appreciates the efforts by your staff to develop permit requirements that are implementable and effective in improving surface water quality- a goal which we share. We look forward to resolution of the remaining issues and to implementing MRP 2.0.

Sincerely,

Doug Hardcastle
Mayor

Attachment: Requested Adjustments to Improve Efficiency in the Municipal Regional Permit Including Elimination of "Less Beneficial Tasks"

Requested Adjustments to Improve Efficiency in the Municipal Regional Permit, Including Elimination of "Less Beneficial Tasks"

Provision	Task or Requirement	Requested Adjustments
C.2 – Eliminate Requirement – Oakley #9 – REL		
C.2.f.	Corporation Yard inspection requirements.	Eliminate this requirement, as it duplicates the requirements for inspections already included in the Stormwater Pollution Prevention Plans (SWPPPs) for these same facilities.
C.3 — Oakley #10 – REL		
C.3.b.i.	Eliminates grandfathering of Regulated Projects with vested tentative maps approved prior to advent of C.3 requirements	Allow municipalities flexibility to require these applicants to implement stormwater treatment requirements only to the extent not in conflict with state law and existing development agreements
C.3.b.ii.(4)	Certain Roads Projects are Regulated Projects under Provision C.3	Delete this requirement as the intent is superseded by the Green Infrastructure requirements in Provision C.3.j.
C.3.b.ii.(1)(c)	Requires projects where 50% or more of existing impervious area is redeveloped to provide treatment for entire area.	Delete this requirement as the intent is superseded by the Green Infrastructure requirements in Provision C.3.j.
C.3.e.ii.	Special Projects— allowance to use non-LID treatment on smart growth development projects that meet specified location and gross density criteria.	To avoid a disincentive for including pedestrian amenities, allow public plazas to be omitted from calculation of project gross density.
C.3.e.v.(1)	Requires Permittees to track Special Projects that have been identified (application submitted) but not approved.	Delete this requirement, as the number of projects, and amount of impervious area, has proven to be small.
C.3.e.v.(2)	Requires Permittees to conduct and document an analysis of the feasibility of LID treatment for Special Projects.	Delete this requirement, as it creates considerable additional effort for applicants and Permittees without any expected water-quality benefit.
C.3.g.vii.	Requires Contra Costa municipalities (through CCCWP) to submit a technical report describing how Contra Costa will implement current Permit hydromodification management requirements.	Delete requirement to submit a technical report. CCCWP submitted a 2013 report on the results of a multi-year monitoring study that concluded current policies and criteria meet these requirements.

C.3.g.iv.	Allows Permittees to propose a different method for sizing hydromodification management facilities that is not biased against Low Impact Development, but requires a Permit amendment before using the method.	Delete requirement for a Permit amendment before the method is used. Note: the Fact Sheet accompanying the Tentative Order states that Water Board Executive Officer approval would be required, not a Permit amendment.

Provision	Task or Requirement	Requested Adjustments
C.3.h.ii.(6)(b) and (c)	Requires Permittees to inspect 20% of Regulated Projects annually, as well as every project at least once every 5 years.	Delete the annual requirement to allow flexibility in scheduling inspections.
C.3.j.i.(1)	Requires each Permittee to prepare and implement a Green Infrastructure Plan (framework for Plan due in 12 months; Plan due in 2018)	Extend the time for submittal of the required framework to a minimum of 20 months.
C.4, C.5, C.6 – Oakley #11 – REL		
C.4., C.5, C.6	For inspections of businesses and construction sites, and for response to illicit discharges, requires that corrective actions of "actual or potential non-stormwater discharges" be implemented before the next rain event, but no longer than 10 business days after potential or actual non-stormwater discharges are discovered.	Delete references that specify types of corrective actions and timeframes for implementation, as these create a disincentive for identifying minor problems and create unproductive administrative work.
C.5 – Delete Requirement – Oakley #12 – REL		
C.5.e.iii.	Requires Permittees to report a list of mobile cleaners operating in their jurisdiction.	Delete, as this information is unavailable.
C.5.e.iii.	Requires Permittees to report a list a summary of specific outreach events and education conducted to the different types of mobile businesses	Delete and clarify that requirements to inspect mobile businesses and abate discharges is covered by existing requirements elsewhere in Provisions C.4 and C.5.
C.7 – Oakley #13 – REL		
C.7.a.	Permittees are required to mark and maintain "no dumping" markings on storm drain inlets.	Move this task to Provision C.2.
C.7.b.	Requires Permittees to participate in or contribute to "advertising" campaigns on specified subjects and assess results.	Change "advertising" to "outreach" to make explicit that a variety of methods, including social media, may be used. Delete references to specific subjects. Allow more flexibility.
C.9 – Delete Requirement - Oakley #14 – REL		

C.9.c.	Requires Permittees to observe pesticide applications by their contractors.	Delete requirement.
C.10 –Trash Compliance Issues – requested changes - Oakley #15 – REL		
C.10.a.i.a.	Requires Permittees to achieve a 70% load reduction by July 1, 2017	Extend this compliance date to 2018.
C.10.a.ii.b.	Requires Permittees to ensure private properties plumbed directly to municipal storm drains are equipped with full trash capture devices or to verify "low" trash generation rate. Requires Permittees to investigate and map these properties.	Delete the mapping requirement and integrate inspections and enforcement into Provision C.4 (Commercial and Industrial Inspections).

Provision	Task or Requirement	Requested Adjustments
C.10.b.1.a.	Specifies maintenance frequencies for full trash capture devices based on trash generation rates.	Set minimum frequency of 1x/year for all devices, to be adjusted based on maintenance experience. Required maintenance frequency is determined mostly by amount of leaf litter and type of device.
C.10.b.1.c.	Requires Permittees to certify that full trash capture systems are maintained to meet standard.	State that systems are maintained, and maintenance program is designed to meet standard.
C.10.b.iv.	Allows a credit of up to 5% toward trash reduction requirement for source control actions such as product bans.	Increase maximum to 20% to fully credit existing product bans and to
C.10.e.i.	Creates a formula for crediting trash collected during additional creek and shoreline cleanups toward trash reduction requirement-at a 1:10 ratio, with a 5% maximum credit.	Make the ratio 1:3 and increase maximum to 10%.
C.10.e.	Credits on-land cleanups and litter reduction only if visual assessments show a categorical change (e.g., from "very high" to "high" trash)	Allow interim credit for demonstrated actions intended to achieve categorical change.
C.10.a.iii.	Requires bioretention facilities to be equipped with a screen to qualify as full-trash-capture facilities.	Specify that these facilities qualify as full trash capture. Screens could cause flooding.
C.10.b.iv.	Requires observations of creeks and shorelines to determine whether trash control actions have prevented trash from discharging to receiving waters.	Restate purpose of observations, as it is not possible to determine that trash originated from storm drains.
C.10.e.ii.	Provides 1:10 ratio up to 10% maximum credit for actions to reduce direct discharge of trash (e.g. dumping, encampments).	Increase ratio to 1:3, with no maximum, as in some locations this is the predominant source of trash.
C.10.f.ii.	Produce an updated trash generation map each year.	Tie updated maps to compliance dates (for 70% and 100%).

July 8, 2015

Bruce Wolfe, Executive 'officer
California Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay St.
Oakland, CA 94612

Via email to: mrp.reissuance@waterboards.ca.gov

Subject: Opposition to the Tentative Order Reissuing the Municipal Regional Stormwater Permit (MRP 2.0)

Dear Mr. Wolfe and Members of the Board:

Thank you for the opportunity to comment on the Tentative Order Reissuing the Municipal Regional Stormwater Permit (MRP 2.0.) The City of Orinda continues to support the Water Board's objectives of reducing stormwater pollution and protecting our local creeks, the delta and San Francisco Bay.

For the past two years, representatives from Contra Costa municipalities, along with a consortium of Bay Area agencies and BASMAA, have been engaged in an ongoing dialogue with your staff regarding: experience gained and lessons learned from the current MRP; how to apply that experience toward maximizing the effectiveness of MRP 2.0, and ensuring that the requirements contained in MRP 2.0 provide for a clear path to compliance.

General – Orinda – #1 – STL

This process generated many new ideas and approaches that build upon experience gained and identify how to expand upon and enhance our stormwater pollution prevention efforts. It also advocated consolidating or eliminating "less beneficial tasks" in the permit, extending implementation dates; reducing reporting, and adjusting ongoing tasks to reduce effort while maintaining effectiveness in protecting water quality.

This approach acknowledges the reality that new or additional funding sources required to implement the new and expanded requirements contained in MRP 2.0 have yet to be identified; and, advocates allocating limited resources in ways that would focus upon, and maximize effectiveness of the major new and expanded mandates.

Despite the extensive effort, few of these ideas were carried forward into MRP 2.0 Therefore, the City of Orinda opposes MRI' 2.0 as it is currently drafted; asks that your Board consider the

(925) 253-4200 (ph)
(925) 254-2068 (fax)

(925) 253-4220 (ph)
(925) 254-2068 (fox)

(925) 253-4210 (ph)
(925) 253-7719 (fax)

(925) 254-2445 (ph)
(925) 253-7716 (fax)

(925) 254-6820 (ph)
(925) 254-9158 (fax)

(925) 253-4231 (ph)
(925) 253-7699 (fox)

following comments, and direct Water Board staff to work with permittees to revise the Tentative Order.

Major New and Expanded Mandates Should Be Offset by Eliminating Less Beneficial Tasks

The draft Tentative Order includes a new mandate to develop Green Infrastructure Plans. This coordinated, multi-year effort represents a significant paradigm shift toward developing comprehensive long range plans that will significantly reduce the amounts of urban runoff pollutants, including the pollutants of concern, flowing into receiving waters. It will also require significant investment on the part of all permittees.

In addition, the City of Orinda's specific concerns with the draft Tentative Order are as follows:

C.3. – Orinda – #2 – STL

- The draft Tentative Order requires all permittees to assess each planned infrastructure project and add Green Infrastructure features where feasible. *Green Infrastructure would be a cost-prohibitive option that would significantly increase the cost of pavement rehabilitation projects. The City of Orinda has the unfortunate standing as having some of the worst roads in the Bay Area, and funding would need to be diverted to water quality treatment facilities instead of the pavement itself. In addition, Orinda has limited right-of-way to accommodate and fit-in Green Infrastructure features.*

C.12. – Orinda – #3 – STL

- The draft Tentative Order requires all permittees to plan and implement a program to manage PCB-containing materials in commercial and industrial structures constructed or remodeled between 1950 and 15'80 at the time those structures are demolished. *The City of Orinda does not have any potentially high PCB-containing material properties. This requirement will significantly increase administrative costs and group costs associated with monitoring and abatement for cities such as the City of Orinda where PCB-co1.taining properties are less prevalent.*

C.10. – Orinda – #4 – STL

- The draft Tentative Order requires all permittees to demonstrate trash load reductions of 70% from 2009 levels- up from the current 40% requirement-by installing full trash capture devices or implementing equivalent trash control measures and evaluating their effectiveness through visual surveys. *The City of Orinda strives to control litter and trash using all of the available resources, however given the vast majority of Orinda has a low trash generating rate, meeting the current trash load targets mandated by the permit have been extremely challenging. The primary high trash area for the City of Orinda is the downtown area, along Camino Pablo and Moraga Way. These areas comprise less than 5 percent of the total land area of Orinda. Implementation of the measures prescribed in this provision have resulted in public monies being expended with little water quality benefit.*

C.10. – Orinda – #5 – STL

- The draft Tentative Order has established a formula with a 10:1 offset for achieving reduction credits through additional creek and shoreline clean ups. *The City of Orinda, in conjunction with the Friends of Orinda Creeks, hosts numerous creek clean up events throughout the year. These events draw in many volunteers and are highly effective in removing hundreds of gallons of trash that would otherwise end up in the bay. The formula as it is written will allow the City of Orinda to take very little, if any, percent reduction from these clean up events even though significant amounts of trash are collected. This provides a disincentive for funding creek clean up events if permittees are not able to achieve reasonable load reduction percentages.*

C.10. – Orinda – #6 – STL

- The draft Tentative Order requires private property owners in high-trash and moderate-trash areas to install full trash capture devices or implement equivalent measures. *The City of Orinda does not have an accurate inventory of storm drain lines on private lands nor is it known how these drains connect to the City's MS4. In order to comply with this requirement, permittees will have to map storm drain lines on private property which will be costly and result in significant use of staff time. We ask that the Water Board consider integrating inspections and enforcement of private property drainage be integrated into C.4 programs.*

General – Orinda – #6b – STL

The City of Orinda is operating in a budget deficit in meeting the current MRP requirements. These major new mandates will require a significant, sustained effort to implement, absent any new or additional funding source.

The attached table summarizes adjustments that have been presented to Water Board staff that would improve program efficiencies or eliminate certain less beneficial tasks. Comprehensive information and rationale has been presented to support these requests. Inclusion of these changes in the MRP 2.0 will allow permittees to focus and apply our limited resources to the major new and expanded mandates, in order to achieve the greatest positive impact.

General – Orinda – #7 – STL

We request that your staff review the attached table and work with permittee representatives to make most or all of the recommended adjustments to "less beneficial tasks."

C.12. – Orinda – #8 – STL

The City of Orinda and other Permittees Must Have a Clear Path to Compliance

Considerable time and effort has been spent discussing how to reduce levels of pollutants of concern flowing into our waterways, particularly PCBs. Failure to achieve the reductions specified in MRP 2.0 could result in our City being held in noncompliance. However, as drafted, MRP 2.0 provides no clear path for permittees to avoid noncompliance. Some examples include:

- The draft Tentative Order mandates achieving specified reductions in the total quantity of PCBs discharged from municipal storm drains. A major means of achieving these reductions is through removal of PCBs during building demolitions. However this fails to acknowledge that permitees have no control over timing of when properties redevelop. *We ask that development of a program to control PCBs during building demolitions, rather than applying controls to a specified number of buildings demolished, should represent compliance with this requirement.*

C.12. – Orinda – #9 – STL

- The Tentative Order includes (in the Fact Sheet) an incomplete method to achieve stipulated reduction credits for each building demolished with PCB controls, for each redeveloped site with new bioretention facilities, and for finding and abating concentrated sources of PCBs. Looking for hidden PCB sources is a good idea, but permittees can't guarantee that they will find them and be able to abate them. *vVe ask that development of a program to systematically identify and review potential sources, and refer them to appropriate agencies for abatement, be the basis for credit toward compliance.*

C.12. – Orinda – #10 – STL

- The draft Tentative Order allows only four (4) months after Permit adoption for permittees to submit a more complete "measurement and estimation methodology and rationale" for stipulating PCB reduction credits. *We ask that BASMAA's PCBs programs accounting methodology be finalized, incorporated into the permit, and then used to calculate PCBs load reductions during permittee annual reporting.*

C.12. – Orinda – #11 – STL

- Water Board staff has stated the threat of noncompliance is intended to strongly encourage permittees to find and abate hidden PCBs, and that Water Board staff would use "enforcement discretion" if and when permittees are unable to meet the mandated PCB load reductions. From a municipal government perspective, new financial and staffing commitments must be based on agreed upon goals and objectives, and have well-defined metrics for measuring progress. *We ask that the load reduction performance criteria not be the point of compliance, and that Water Board staff work with permittee representatives to revise the Draft Tentative Order so that it provides a clear and feasible pathway for permittees to attain compliance. Most factors that are key to meeting the load reduction performance criteria are uncertain and many are not within permittee control (e.g., extent of source properties that will be found, building demolition rates, and redevelopment rates), making achievement of compliance uncertain.*

The City of Orinda appreciates the efforts by your staff to develop permit requirements that are implementable and effective in improving surface water quality-a goal which we share. We look forward to resolution of the remaining issues and to implementing MRP 2.0.

Sincerely,

D
Mayor, City of Orinda

Cc: Steve Glazer, California State Senator
Catharine Baker, C Jifornia State Assembly
Tom Dalziel, Contra Costa Clean Water Program, Program Manager

Attachment

CCCWP Requested Adjustments to Improve Efficiency in the Municipal Regional Permit, Including Elimination of "Less Beneficial Tasks"

	Provision	Task or Requirement	Requested Adjustments
C.2.f. – Orinda – #12 – STL	C.2.f.	Corporation Yard inspection requirements.	Eliminate this requirement, as it duplicates the requiren inspections already included in the Stormwater Pollutio Plans (SWPPPs) for these same facilities.
C.3.b.i. – Orinda – #13 – STL	C.3.b.i.	Eliminates grandfathering of Regulated Projects with vested tentative maps approved prior to advent of C.3 requirements	Allow municipalities flexibility to require these applicant stormwater treatment requirements only to the extent n with state law and existing development agreements
C.3.b.ii.(4) – Orinda – #14 – STL	C.3.b.ii.(4)	Certain Roads Projects are Regulated Projects under Provision C.3	Delete this requirement as the intent is superseded by Infrastructure requirements in Provision C.3.j.
C.3.b.ii.(1)(c) – Orinda – #15 – STL	C.3.b.ii.(1)(c)	Requires projects where 50% or more of existing impervious area is redeveloped to provide treatment for entire area.	Delete this requirement as the intent is superseded by Infrastructure requirements in Provision C.3.j.
C.3.e.ii. – Orinda – #16 – STL	C.3.e.ii.	Special Projects-allowance to use non-LID treatment on smart growth development projects that meet specified location and gross density criteria.	To avoid a disincentive for including pedestrian ameniti plazas to be omitted from calculation of project gross d
C.3.e.v.(1) – Orinda – #17 – STL	C.3.e.v.(1)	Requires Permittees to track Special Projects that have been identified (application submitted) but not approved.	Delete this requirement, as the number of projects, and impervious area, has proven to be small.
C.3.e.v.(2) – Orinda – #18 – STL	C.3.e.v.(2)	Requires Permittees to conduct and document an analysis of the feasibility of LID treatment for Special Projects.	Delete this requirement, as it creates considerable add applicants and Permittees without any expected water-
C.3.g.vii. – Orinda – #19 – STL	C.3.g.vii.	Requires Contra Costa municipalities (through CCCWP) to submit a technical report describing how Contra Costa will implement current Permit hydromodification management requirements.	Delete requirement to submit a technical report. CCCW 2013 report on the results of a multi-year monitoring st concluded current policies and criteria meet these requ
C.3.g.iv. – Orinda – #20 – STL	C.3.g.iv.	Allows Permittees to propose a different method for sizing hydromodification management facilities that is not biased against Low Impact Development, but requires a Permit amendment before using the method.	Delete requirement for a Permit amendment before the used. Note: the Fact Sheet accompanying the Tentative that Water Board Executive Officer approval would be r Permit amendment.

	Provision	Task or Requirement	Requested Adjustments
C.3.h.ii.(6)(b)-(c) – Orinda – #21 – STL	C.3.h.ii.(6)(b) and (c)	Requires Permittees to inspect 20% of Regulated Projects annually, as well as every project at least once every 5 years.	Delete the annual requirement to allow flexibility in scheduling inspections.
C.3.j.i.(1) – Orinda – #22 – STL	C.3.j.i.(1)	Requires each Permittee to prepare and implement a Green Infrastructure Plan (framework for Plan due in 12 months; Plan due in 2019}	Extend the time for submittal of the required framework to a minimum of 20 months.
C.4, C.5., C6 – Orinda – #23 – STL	C.4, C.5, C.6	For inspections of businesses and construction sites, and for response to illicit discharges, requires that corrective actions of "actual or potential non-stormwater discharges" be implemented before the next rain event, but no longer than 10 business days after potential or actual non-stormwater discharges are discovered.	Delete references that specify types of corrective actions and timeframes for implementation, as these create a disincentive for identifying minor problems and create unproductive administrative work.
C.5.e.iii. – Orinda – #24 – STL	C.5.e.iii.	Requires Permittees to report a list of mobile cleaners operating in their jurisdiction.	Delete, as this information is unavailable.
C.5.e.iii. – Orinda – #25 – STL	C.5.e.iii.	Requires Permittees to report a list and summary of specific outreach events and education conducted to the different types of mobile businesses	Delete and clarify that requirements to inspect mobile businesses and abate discharges is covered by existing requirements elsewhere in Provisions C.4 and C.5.
C.7.a. – Orinda – #26 – STL	C.7.a.	Permittees are required to mark and maintain "no dumping" markings on storm drain inlets.	Move this task to Provision C.2.
C.7.b. – Orinda – #27 – STL	C.7.b.	Requires Permittees to participate in or contribute to "advertising" campaigns on specified subjects and assess results.	Change "advertising" to "outreach" to make explicit that a variety of methods, including social media, may be used. Delete references to specific subjects. Allow more flexibility.
C.9.c. – Orinda – #28 – STL	C.9.c.	Requires Permittees to observe pesticide applications by their contractors.	Delete requirement.
C10.a.i.a. – Orinda – #29 – STL	C.10.a.i.a.	Requires Permittees to achieve a 70% load reduction by July 1, 2017	Extend this compliance date to 2018.

C10.a.ii.b. – Orinda – #30 – STL	C.10.a.ii.b.	Requires Permittees to ensure private properties plumbed directly to municipal storm drains are equipped with full trash capture devices or to verify "low" trash generation rate. Requires Permittees to investigate and map these properties.	Delete the mapping requirement and integrate inspections and enforcement into Provision C.4 (Commercial and Industrial Inspections).

	Provision	Task or Requirement	Requested Adjustments
C10.b.i.a. – Orinda – #31 – STL	C.10.b.1.a.	Specifies maintenance frequencies for full trash capture devices based on trash generation rates.	Set minimum frequency of 1x/year for all devices, to be based on maintenance experience. Required maintena is determined mostly by amount of leaf litter and type o
C10.b.1.c. – Orinda – #32 – STL	C.10.b.1.c.	Requires Permittees to certify that full trash capture systems are maintained to meet standard.	State that systems are maintained, and maintenance p designed to meet standard.
C10.b.iv. – Orinda – #33 – STL	C.10.b.iv.	Allows a credit of up to 5% toward trash reduction requirement for source control actions such as product bans.	Increase maximum to 20% to fully credit existing produ create incentive for future source control actions.
C10.e.i. – Orinda – #34 – STL	C.10.e.i.	Creates a formula for crediting trash collected during additional creek and shoreline cleanups toward trash reduction requirement-at a 1:10 ratio, with a 5% maximum credit.	Make the ratio 1:3 and increase maximum credit to 10
C10.e. – Orinda – #35 – STL	C.10.e.	Credits on-land cleanups and litter reduction only if visual assessments show a categorical change (e.g., from "very high" to "high" trash)	Allow interim credit for demonstrated actions intended t categorical change.
C10.a.iii. – Orinda – #36 – STL	C.10.a.iii.	Requires bioretention facilities to be equipped with a screen to qualify as full-trash-capture facilities.	Specify that these facilities qualify as full trash capture. cause flooding.
C10.b.iv. – Orinda – #37 – STL	C.10.b.iv.	Requires observations of creeks and shorelines to determine whether trash control actions have prevented trash from discharging to receiving waters.	Restate purpose of observations, as it is not possible to trash originated from storm drains.
C10.e.ii. – Orinda – #38 – STL	C.10.e.ii.	Provides 1:10 ratio up to 10% maximum credit for actions to reduce direct discharge of trash (e.g. dumping, encampments}.	Increase ratio to 1:3, with no maximum, as in some loc predominant source of trash.
C10.e.ii. – Orinda – #39	C.10.f.ii.	Produce an updated trash generation map each year.	Tie updated maps to compliance dates (for 70% and 1

CITY OF PACIFICA
170 Santa Maria Avenue • Pacifica, California 94044-2506
www.cityofpacifica.org

Scenic Pacifica
Incorporated November 22, 1957

July 7, 2015

Mr. Bruce Wolfe
Executive Officer
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

SUBJECT: COMMENTS REGARDING THE TENTATIVE ORDER FOR THE SAN FRANCISCO BAY REGION MUNICIPAL REGIONAL STORMWATER PERMIT

The City of Pacifica (City) appreciates the opportunity to submit the following comments on the Tentative Order for the San Francisco Bay Region Municipal Regional Stormwater Permit, specifically section C.14. City of Pacifica and San Mateo County Fecal Indicator Bacteria Controls. The City is greatly concerned with bacterial loadings in San Pedro Creek and at Pacifica State Beach and recognizes the need to improve water quality.

Our comments are as follows:

C.14. – Pacifica #1 - SKM

- The City, in collaboration with the County of San Mateo, has worked hard to receive, discuss and address comments from the Water Board staff on multiple iterations of the San Pedro Creek and Pacifica State Beach Bacteria TMDL Best Management Practices Implementation Plan and Monitoring (TMDL BMP and Monitoring Plan). C.14 of the MRP should reflect this Plan and provide references to it, rather than outline specific requirements in the permit itself.

C.14.a.ii.(5) – Pacifica #2 - SKM

- Provision C.14.a.ii.(5) requires that the City inspect and clean-up the ten (10) high priority dog waste locations (required under Provision C.14.a.ii.(4)) on a monthly basis from November 1 through March 31 and prior to forecast rain events with a rainfall of 0.1 inches or more. Consistent with City policy, the required trash receptacles at these locations will already be emptied at least weekly; however, more detailed inspections and clean-ups will require specially trained City staff. Recognizing limited City resources, the frequency of inspections and clean-ups should be reduced to a quarterly basis throughout the year. Given the unpredictable nature of rainfall, it is difficult for the City to ensure that staff will be available for this task prior to storm events. If the Water Board does not modify this requirement, the City requests that the Water Board specify which forecast station to monitor and what time period applies (e.g., daily, hourly). In addition, the rainfall depth should be increased from 0.1 to 0.5 inches. In

Pacifica's coastal location, rainfall events of 0.1inches are very common. For example, between 1998 and 2014, 0.1inches of daily rainfall was recorded at Pacifica rain guages an average of 40 times per year. If inspections and cleanups were required prior to each of these rainfall events, it would represent a very costly undertaking. Furthermore, the value of these inspections and clean-ups is questionable; the presence of waste bag dispensers and trash cans at these stations is intended to eliminate pet waste left on sidewalks.

C.14.c.ii.(3) – Pacifica #3 - SKM

- Provision C.14.c.ii.(3) requires that the City and County of San Mateo analyze samples for human--, horse-, and dog-specific genetic markers (i.e., microbial source tracking; MST) to characterize bacteria in the watershed. Although the City and County intend to sample for these constituents in Water Year 2016 (WY2016}, this approach should not be required in subsequent years of characterization monitoring (e.g., WY2018, WY2020, etc.). Similar MST studies have been conducted in the past in the same watershed; however, Water Board staff has disregarded the results when the TMDL BMP and Monitoring Plan was in development. The City would like an assurance that characterization monitoring results that it and the County conducts will be considered in future evaluations of the watershed.

C.14.c.ii.(5) – Pacifica #4 - SKM

- Provision C.14.c.ii.(5) requires that any and all changes to the iterative characterization monitoring plan be reviewed and accepted by the Executive Officer. Executive Officer approval should be eliminated. Characterization monitoring, as described in the TMDL BMP and Monitoring Plan and Provision C.14.c.i. is intended to be iterative in nature and allow for flexibility of design and details in years subsequent to WY2016. Executive officer review and acceptance of changes to the plan may be lengthy and/or result in unnecessary additional investigation with unknown cost and schedule implications.

C.14. Fact Sheet – Pacifica #5 - SKM

- The City would like acknowledgment in the MRP fact sheet that the ecology of the reference watershed for the TMDL, which is what the wasteload allocations were based on, differs significantly from the ecology of the San Pedro Creek watershed.

Please feel free to contact Raymund Donguines at (650)738-3768 or donguinesr@ci.pacifica.ca.us should you have any questions or require additional information. Thank you for your consideration of these comments.

Sincerely,

Qo:;:po,PE
Director of Public Works / City Engineer

Jy
DaveGromm
Director of Wastewater, Collection & Plant Operations

Cc: Matthew Fabry, Coordinator- San Mateo Countywide Water Pollution Prevention Program

PUBLIC WORKS
CITY OF PALO ALTO
2501 Embarcadero Way
Palo Alto, CA 94303
650.329.2598

July 10, 2015

Mr. Bruce Wolfe
Executive Officer
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

Subject: Comments from the City of Palo Alto on the Municipal Regional Permit (MRP) Tentative Order- May 11, 2015

Dear Mr. Wolfe:

Thank you for the opportunity to submit comments on the San Francisco Bay Regional Water Quality Control Board's Municipal Regional Permit (MRP or Permit) Tentative Order dated May 11, 2015.

General – Incorporate by reference SCVURPPP and BASMAA comments – Palo Alto #1 – SKM

These comments incorporate by reference comments submitted by the Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP) as well as the Bay Area Stormwater Management Agencies Association (BASMAA).

The City of Palo Alto is proud of our significant environmental leadership, having installed one of the first structures to divert stormwater to the sanitary sewer and successfully completed a green street project during the current permit term. In addition, Palo Alto has been a leader on litter issues since *2002,* including piloting trash booms in local creeks and implementing innovative multi-benefit programs, including the Downtown Streets Team. The City of Palo Alto's comments focus on the Green Infrastructure, mercury and PCBs, and trash provisions.

General – Green Infrastructure, Mercury & PCBs requirements present significant compliance challenges and high degree of uncertainty for compliance – Palo Alto #2 – SKM

Green Infrastructure. Mercury and PCBs

The City of Palo Alto implemented one of the green infrastructure projects required by the current MRP and also operates the sanitary sewer diversion structure, which was analyzed during the current MRP for mercury and PCB reduction potential. The City has therefore gained insights into the timelines and resources needed to successfully implement these pollutant control measures. The City of Palo Alto believes that the Green Infrastructure, mercury and PCB requirements proposed in the Tentative Order present significant compliance challenges for the City and create a high degree of uncertainty in determining whether we will be deemed in compliance with the permit. We foresee the following barriers to achieving the requirements and improving water quality, which is our ultimate goal:

C.11. & C.12. – Palo Alto #3 – SKM

- The attainability of load reduction requirements for PCBs and mercury are based on a number of assumptions regarding the controllability of these pollutants. However, these assumptions are highly uncertain and many are not within the City's control. For example, the City is in the process of determining whether properties with high levels of PCBs exist, and hot spots are difficult to find and these pollutants are generally dispersed. Additionally, the City does not control the rate of redevelopment that may create the green infrastructure opportunities on private property. Lack of control with the rate at which controls are

implemented on private property is a significant concern and does not provide us with a clear path to compliance with the permit.

C.3.j. – Palo Alto #4 – SKM

- With regard to green infrastructure implementation, obtaining funding and receiving stakeholder input takes time and may not coincide with time schedules required by the permit. The implementation timelines in provisions C.3 and the mercury/PCB provisions are not aligned in the Tentative Order. The City's Southgate Neighborhood green street project timeline was more than three years:
    - RFP process (September 2011) and hiring consultant (November 2011)
    - Three community meetings February to July 2012
    - Final design community meeting September 2013, then implementation
    - Completion in late 2014

C.11. & C.12. – Palo Alto #5 – SKM

In summary, the City of Palo Alto's goal is to protect and improve water quality in the creeks and Bay, however, Permittees need to have realistic time frames and a higher level of certainty that sincere efforts to make a difference, which may fall short of achieving the load reduction goals in the Tentative Order, will not put their agency in a compliance limbo. The currently proposed requirements based on load reduction performance criteria create a high level of uncertainty as to whether the City will be deemed in compliance with the permit, regardless of the level of effort put into the control of these legacy pollutants. Compliance should be based upon implementing control programs designed to achieve load reduction action levels within realistic timeframes rather than achieving specific load reductions.

C.12.f. – Palo Alto #6 – SKM

In terms of the requirement for addressing PCBs during the demolition of older buildings, we strongly urge the Water Board to allow at a minimum the entire permit term for Permittees to work with the State, USEPA, the building industry, and other stakeholders to attempt to develop a comprehensive statewide or federal program analogous to current programs for abatement of asbestos and lead paint. This would create a more efficient, effective, and consistent program rather than individual municipalities passing ordinances. We believe that USEPA should play a lead role in development of this program.

Trash

C.10.b.iii. – Palo Alto #7 – SKM

The City of Palo Alto has been a leader in implementing source controls for litter. Palo Alto was one of the first municipalities to ban single-use plastic check-out bags at grocery stores in 2008 and expanded its ordinance in 2013 to include all retail and restaurants following the preparation of an Environmental Impact Report. Palo Alto was also one of the first municipalities to ban expanded polystyrene or non-recyclable plastic at food vendors (adopted in 2009 and in effect 2010). The polystyrene ordinance is currently being expanded to include bans on the sale of polystyrene products. Each of these actions required extensive staff time for environmental review, public meetings, stakeholder interactions, and Council meetings. The City has collected extensive data on the positive impacts of these ordinances. In summary:

- Polystyrene:
    - Compliance verification data for the expanded polystyrene ordinance as part of regular food service establishment inspections: Initial surveys in 2010 of all food service establishments showed 95% compliance. Since then routine inspections and complaints have ranged from 0 to 2 per year.
    - Creek clean up events starting in 2012 tallied Styrofoam foodware vs. packaging. The foodware percentage is low and trending down.

- Plastic Bags:
  - Store Exit Surveys: staff has performed annual surveys at grocery stores and pharmacies since 2008 by observing customers exiting the stores. 76% of customers at pharmacies and large grocery stores now use reusable bags or no bags when making their purchases; none use single-use plastic bags. This shift away from paper exceeds the expectations from the EIR.
  - Large Retailer (10,000 square feet and greater) compliance audit: one hundred percent of large retail stores are in compliance by not distributing single-use plastic bags and charging for paper and reusable bags.
  - Small Retail and Food Service Establishment compliance checks: Staff estimates that 88% of small retailers and 82% of food service establishments are currently in compliance with the ordinance. Staff is working with the noncompliant retailers and food service establishments. Please note that restaurant bag restrictions went into effect in November 2013, about six months after the retail restrictions.
  - Trash Boom, Creek Clean Up and On-land data: Bag litter has decreased significantly in creeks and on land with bag data tracked separately for creek clean ups and trash removed from booms installed across local creeks. A comparison of litter counts at the Matadero Creek clean up events between .2014 and 2012 shows an 85% reduction in total plastic check-out bag litter. Field observations of bags on land show a 90% reduction in bag litter when compared with a pre-ordinance count in 2013.

In the 2014/15 annual report, the City of Palo Alto claimed trash reductions of 7% for the single-use bag ordinance and 5% for the polystyrene ordinance based on compliance and environmental data for a total of 12%. The City plans additional source control actions, including the expansion of the expanded polystyrene ban, and is concerned that not receiving adequate value from such actions will make it difficult to obtain funding and support. The City of Palo Alto requests that the maximum of 5% reduction for all source control actions currently allowed in the Tentative Order be increased to account for the significant environmental benefits derived from these actions. On-land visual observations do not capture the entirety of these reductions, because they are only precise enough to detect reductions greater than 25 percent. Consistent with SCVURPPP, the City of Palo Alto requests that all source control actions combined have a maximum trash load reduction of up to 25%, provided that Permittees have supporting data for any reductions associated with source controls.

The City of Palo Alto would like to thank Water Board staff for their attention to previously submitted comments and input by Permittees. We appreciate your consideration of these comments and look forward to your response.

Sincerely,

Phil Babel, Assistant Director
Environmental Services- Public Works
City of Palo Alto

PSSEP
Partnership for Sound Science in Environmental Policy

July 10, 2015

San Francisco Regional Water Quality Control Board
Attn: Mr. Dale Bowyer
1515 Clay Street, Ste. 1400
Oakland, CA 94612

Submitted via email: mrp.reissuance@waterboards.ca.gov

Subject: Municipal Regional Stormwater Permit Reissuance (May 11, 2015 Draft)

Dear Mr. Bowyer:

These comments are submitted on behalf of the Partnership for Sound Science in Environmental Policy ("PSSEP") on the proposed Municipal Regional Stormwater Permit Reissuance (May 11, 2015 Draft) (hereafter, "Draft MRP"). PSSEP is an association of municipal, industrial, and trade association entities in California whose members are regulated by the State and Regional Water Boards under their joint, Federal Clean Water Act and Porter-Cologne Water Quality Control Act authorities.

At the outset, we wish to acknowledge the work of Regional Board staff in developing the revised MRP as it relates to trash reduction in the region's waters. PSSEP and its members support the Regional Board's goal of reducing trash throughout the region's waters, and we also appreciate the need to provide reasonable flexibility for local communities to comply with the new standards. PSSEP appreciates the opportunity to provide these comments on the Draft MRP.

As you know, PSSEP has been actively engaged over the past few years on the issue of trash reduction strategies presented on behalf of the Bay Area Municipal Separate Storm Sewer System ("MS^4") agencies. Our comments before the Regional Board have been consistent and focused: in order for MS^4 agencies to claim "credit" for achieving trash reductions in their respective jurisdictions as a result of adopting ordinances that would ban certain products and packaging materials, the agencies should be required to affirmatively demonstrate specific reductions attributable to those ordinances. Similarly, where MS^4 agencies seek credit toward their trash reduction obligations under the MRP for merely adopting product and packaging bans, they must affirmatively demonstrate that banning one type of product or packaging doesn't result in a proliferation of *substitute litter* that takes its place.

1115 – 11th Street, Suite 100 ● Sacramento, CA 95814 ● 916/498-3326

C.10 - To claim "credit" for trash reductions as a result of adopting ordinances that would ban certain products and packaging materials, Permittees should be required to affirmatively demonstrate reductions attributable to those ordinances. Also, they must affirmatively demonstrate that banning one type of product or packaging doesn't result in a proliferation of *substitute litter* that takes its place. – PSSEP #1 - JBO

1. Credits and "Offsets" for One-Off Product and Packaging Bans

Last year, at the State Water Board workshop on its proposed statewide Trash Policy, State Board Member Doduc asked for specific comments on whether "institutional controls" such as product bans are effective and can be relied on to meet the State Board's proposed "zero trash" standard. The short answer is, "no."

Product bans are "feel-good" measures that provide a misplaced – if not false - sense of security for communities feeling the ever-growing pressure of reducing trash loading to California's waterways. As such, many cities in the Bay Area passed these product bans, yet there has been no empirical data to show that the volume of trash reaching Bay Area waterways has been reduced. In fact, the only known trash survey performed by a city both before and after the adoption of such product bans demonstrated that people simply discarded replacement products at or about the same rate as they did the banned products. (*See*, City of San Francisco Streets Litter Re-Audit, 2008. Prepared by HDR, Born, Vence & Associates, Inc., and MGM Management. July 4, 2008.)

The issue of "substitution litter" caused by banning one type of product or packaging material is one which the State Water Resources Control Board addressed in adopting its statewide Trash Policy earlier this year. Specifically, the State Water Board realized that adopting local ordinances that ban specific product or packaging frequently result in a substitute taking their place, which is just as likely to be discarded by the end-user, and find its way into the MS^4 agencies' stormwater. For this reason, the statewide Trash Policy adopted by the State Water Board just a few months ago ***rejected*** the notion of allowing credits or offsets to MS4 agencies that adopt such ordinances. (*See*, *Staff Report Including the Substitute Environmental Documentation, Amendments to the Statewide Water Quality Control Plans for the Ocean Waters of California to Control Trash and Part 1 Trash Provisions of the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California*, March 26, 2015, at p. 171. (hereafter, "Statewide Trash Policy")

The reality is: product bans have not been shown to result in measurable reductions in litter surveys. People who are prone to senselessly throw a polystyrene foam cup on the ground are equally likely to throw the replacement paper cup on the ground, and the same can be said for nearly any other product targeted for local bans. As long as there is a replacement for the banned product, logic dictates that it, too, will find its way into the state's storm drains. For a more thorough technical analysis of why product bans are ineffective at reducing overall trash loading via storm drain runoff, we commend the work of Dr. Steven Stein of Environmental Resources Planning LLC,

detailed in the comments submitted by the American Chemistry Council on the proposed Trash Control Policy, and dated August 4, 2014. (Attached.)

While PSSEP takes no position on the appropriateness or advisability of individual cities and other jurisdictions adopting product bans on items such as plastic bags or polystyrene foam food containers, we continue to believe it's inappropriate for the Regional Board to provide regulatory incentives for MS^4 agencies to adopt these types of "institutional" or source controls simply as a means of avoiding the costly installation and maintenance of full-capture structural controls. If individual cities and other MS^4 agencies wish to adopt plastic bag and polystyrene foam food container bans, that is certainly their prerogative. But the Regional Board's MRP should neither suggest nor codify that these purely feel-good measures will achieve real reductions in trash found in our waterways.

2. The MRP's Reference to "Substantial Evidence" is Vague

We appreciate Regional Board staff's consideration of our previous comments on the propriety of granting credits to MS^4 agencies who wish to claim "credits" toward their trash reduction goals by simply adopting product or packaging bans. We appreciate staff's efforts to both limit the availability of credits, as well as to require MS^4 agencies claiming such credits to make an affirmative and verifiable demonstration that such "institutional controls" (like product and packaging bans) are actually reducing litter in a given jurisdiction. PSSEP believes this is a major improvement and supports staff's approach. Specifically, Provision C.10.b.iv of the Draft MRP provides that, in order to claim a load percentage reduction value, MS^4 agencies "must provide substantial evidence that these actions reduce trash by the claimed value." (Draft MRP at p. C.10-5.)

C.10.b.iv – We support the provision that, in order to claim a load percentage reduction value, Permittees "must provide substantial evidence that these actions reduce trash by the claimed value." - PSSEP #2 - JBO

C.10.b.iv – However, we believe the phrase "substantial evidence" is vague and confusing, and should be replaced with more appropriate language like "substantive and credible information"; Permittees cannot meet their evidentiary burden merely by referencing studies in other jurisdictions. - PSSEP #3 - JBO

While PSSEP supports this requirement of making an affirmative and verifiable demonstration that such "institutional controls" (like product and packaging bans) are actually reducing litter in a given jurisdiction, we believe the phrase "substantial evidence" is vague and confusing, and should be replaced with more appropriate language so that the MS^4 agencies and the general public know what information must be produced to verify trash reductions. PSSEP suggests replacing the phrase, "substantial evidence" with something like, "substantive and credible information" to avoid confusion with an unrelated legal concept known as the "substantial evidence

test."[1]

[1] The substantial evidence test is a very deferential standard that applies to judicial review of certain agency actions. Under this standard, as long as the MS[4] agencies submit "some evidence" that the product bans reduce trash, the Regional Board would arguably be forced to grant the credit. Even the "uncorroborated testimony of one witness" could constitute substantial evidence. (*Plastic Pipe & Fittings Assn. v. California*

In sum, the Regional Board should revise Provision C.10.b.iv to make clear the following:

- Permittees must demonstrate that their baseline trash calculation methods - - as well as trash reduction calculation methods - - have been peer reviewed and are generally accepted in the field.
- Permittees must demonstrate that a proposed ban will result in net trash reduction, and that that merely banning one type of litter doesn't result in substitute litter taking its place.
- Permittees cannot meet their evidentiary burden merely by referencing studies in other jurisdictions.

C.10 - Permittees must demonstrate that their baseline trash calculation methods, as well as trash reduction calculation methods, have been peer reviewed and are generally accepted in the field – PSSEP #4 - JBO

3. Funding Structural Trash Capture Devices.

At the Regional Board workshop yesterday on the draft MRP, many comments were offered by various local elected officials and city staff about the unreasonable and exorbitant cost of installing and maintaining full-capture structural control devices. Several even cited the "near impossibility" of raising stormwater fees to pay for these full-capture devices due to Proposition 218 and the ability of local taxpayers to overturn any new fees.

There is little doubt that pervasive installation and adequate maintenance of full-capture structural devices throughout an MS[4] agency's jurisdiction is the only reliable way to achieve the Regional Board's ultimate goal of "zero discharge" of trash in the region's waterways. Anyone familiar with the background and history of the State and Regional Water Boards' efforts to address trash discharges to California's waterways understands that the major impediment to achieving the "zero discharge" goal is finding adequate financial resources to enable local communities to install,

---

Building Standards Commission (2004) 124 Cal.App.4th 1390, 1407.) The Regional Board would be prohibited from weighing the available evidence. (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 393.) And the Regional Board would be required to accept the MS[4] agencies' argument that bans reduce trash even if "an opposite conclusion would have been equally or more reasonable." (*Id*.) The substantial evidence test doesn't belong in the MRP for several reasons.. First, it is inconsistent with the Porter-Cologne Act. Under the Porter Cologne Act, courts review permitting decisions by the Regional Board under the independent judgment standard. (Cal. Water Code § 13320(e).) Under this standard, the trier of fact (which is the Regional Board here) is required to weigh the evidence and uphold a decision only if it is supported by the weight of the evidence. (Cal. Code Civ. Proc. § 1094.5(c).) In other words, the trier of fact can uphold a decision only if the evidence shows that it is probably (more likely than not) correct. Applying the substantial evidence test here would clearly conflict with the Legislature's determination that permitting decisions under the Porter Cologne act must be supported the weight of the evidence. Second, the reason that Courts often review agency decisions under the substantial evidence test is that they lack the scientific and technical expertise to scrutinize factual disputes on technical issues. (*Laurel Heights Improvement Assn.*, 47 Cal.3d at 393.) But here, the Regional Board is well equipped to evaluate whether, and to what extent claimed by the MS[4] agencies, specific

product and packaging bans reduce trash.

operate and maintain structural trash capture devices. As such, PSSEP believes now is the time to become more creative in finding ways to identify local funding sources for California's MS^4 agencies to meet this challenge.

According to the economic analysis prepared for the Statewide Trash Policy by the Office of Research, Planning and Performance (Appendix C to the Statewide Trash Policy), the average incremental cost to install and maintain full capture devices throughout California is ***$12.03 per person, per year – or about $1 each month***. (*See*, Appendix C, Table 13 at p. C-24.)

Many local governments are understandably reluctant to impose new stormwater fees on their citizens for a variety of reasons. Chief among them may be concern that any new fees or taxes imposed could be subject to Propositions 218/26 challenges from ratepayers. Perhaps it is time to view this dilemma from a different perspective, and recognize that new local storm water fees are not needed.

Most local governments are familiar with garbage franchise agreements as a means of contracting for services provided to a community that achieve a common good. Why not consider using the garbage franchise agreement as a means of efficiently installing full capture devices, as well as contracting with the franchisees to maintain and clean-out the full capture devices on a routine basis? While many private garbage franchise companies may not currently have the expertise to provide these services, logic dictates that if there is profit to be made by expanding the services they offer to local communities, private garbage franchise companies will quickly develop the expertise. Further, the list of California-based companies that manufacture and provide maintenance services for full capture devices is growing steadily. Promoting partnerships among these companies, the garbage franchisees, and the MS^4 agencies to identify creative financing mechanisms for installing and maintaining full capture devices could break the log-jam of historical reluctance on the part of MS^4 agencies of pursuing full capture devices.

The benefits of combining storm drain trash control services with the typical garbage franchise contract are several. First, what is storm drain trash control if not quintessentially "garbage handling and removal"? By definition, installing the infrastructure for storm drain trash control – as well as maintaining them – would appropriately be considered within a garbage franchise agreement. Second, by including these services within a garbage franchise, the capital costs of the full capture devices can be appropriately amortized over several years, thus reducing what would otherwise be large, up-front costs to local MS^4 agencies. Third, including these services within a garbage franchise would avert the need for local MS^4 agencies to take-on large numbers of new employees to install and maintain the full capture systems. Fourth,

garbage franchise fees are not subject to voter approval under Propositions 218 and 26 because they are not "incident to property ownership" – the test of whether a local government fee is subject to voter approval. Because Proposition 218 imposes no limit on private fees charged for services provided to a municipal government, the only limitation on the MS[4] agency would be in properly negotiating the garbage franchise agreement terms.

At a minimum, the MRP should require Bay Area MS[4] agencies to report annually on their ***individual*** efforts to either: (1) adopt new stormwater fees to fund full-capture structural controls, or (2) pursue other means of funding such structural controls, such as garbage franchise agreements noted above.

C.10 – We suggest consideration of using the garbage franchise agreements as a means of efficiently installing full capture devices, as well as contracting with the franchisees to maintain and clean-out the full capture devices on a routine basis. At a minimum, the MRP should require Permittees to report annually on their individual efforts to either: (1) adopt new stormwater fees to fund full- capture structural controls, or (2) pursue other means of funding such structural controls, such as garbage franchise agreements noted above. – PSSEP #5 - JBO

Thank you for the opportunity to provide these comments on the draft MRP.

Sincerely,

Craig S.J. Johns
Program Manager

Attachment:

"Technical Assessment Report: California Statewide Water Quality Control Plans to Control Trash – June 2014 Draft," ERP Planning. August 2014.

Technical Assessment Report

California Statewide Water Quality Control Plans to Control Trash – June 2014 Draft

Conducted for

American Chemistry Council

by

Environmental Resources Planning, LLC
Gaithersburg, MD

August 2014

Table of Contents

List of Tables

List of Figures

Acknowledgments

Thanks to the communities and study authors for providing copies of the cited litter surveys as well as details about the methodologies and findings of these studies. The litter surveys cited in this report can be obtained either online, through the communities for which they were conducted or from the study authors themselves. Citations for each survey are included in the References section of this report.

Background

Littered items can easily find their way into stormwater systems. Rain can move these items into waterways causing aesthetic and functional issues.

California's State Water Resources Control Board and Regional Water Quality Control Boards (Water Boards) manage trash in stormwater primarily through Total Maximum Daily Loads (TMDLs) and permits.

The State Water Resources Control Board (State Water Board) has now proposed amendments to Statewide Water Quality Control Plans to Control Trash (Trash Amendments).

The provisions proposed in the Trash Amendments include six elements:

(1) Water quality objective,
(2) Prohibition of discharge,
(3) Implementation provisions,
(4) Time schedule,
(5) Time extension options for State Water Board consideration, and
(6) Monitoring and reporting requirements.

As proposed, the Trash Amendments would apply to all surface waters of the state, with the exception of waters under the jurisdiction of the Los Angeles Water Board that have trash TMDLs in effect prior to the effective date of the Trash Amendments.

Environmental Resources Planning, LLC (ER Planning), subject matter experts in the field of litter surveys and studies, conducted an evaluation of these documents at the request of the American Chemistry Council. ER Planning is the only private U.S. firm focusing exclusively on litter surveys and litter-related research studies. Field crews under our direction have surveyed more than 21 million square feet of roadways and recreational areas, including cities in California.

Although the time available to provide this analysis was limited, it is hoped that this examination of the Trash Amendments and the subsequent recommendations provided will be useful in helping stakeholders in California to craft programs that reduce the amount of litter and trash entering California stormwater systems and waterways more effectively.

Technical Assessment

Trash Characterization Methodologies

Litter can be measured by using weight, volume or counts. Counts can be either fresh litter counts or Visible Litter Survey tallies. Determining the most accurate and precise method of measuring litter and stormwater trash is of prime importance. An overview of each methodology is provided below.

1. Weight

Weight-based surveys require that all items are dried to the same level of moisture content to ensure consistency in weight measurements. Weights do not always reflect the offensiveness or impacts of littered items, nor do they lend themselves to baseline comparisons since advances in lighter packaging and thin-walling of products has been ongoing since the early 1990s. Weights are naturally biased toward heavier items such as metal construction debris and wood. Measuring litter accurately by weight has proven to be expensive for municipalities.

2. Volume

Volumetric surveys do not always account for the fact that the collection and removal of the components of litter tend to be similar and do not always correlate to size. Measuring litter accurately by volume has also proven to be inordinately expensive for municipalities.

Volumetric measures should also be avoided due to significant errors of accuracy measuring stormwater trash, as occurred with BASMAA in 2012 (Environmental Resources Planning, [ERP], 2012).[1]

Caltrans has recognized that measuring materials by volume noticeably increased the proportion of lightweight materials due to material densities.

> "Another observation is the increased proportion of styrofoam [sic] compared to weight, due to its low density, and the reverse trend for the dense moldable plastics." (Caltrans, 2000, p. 6-6)

In fact, this applies to all light, low-density components of litter and can be misleading when tallies are not also provided.

The Institute for Applied Research, a California firm that led more than 60 litter surveys, noted that volume is the least precise method of measuring litter.

[1] The contractor used by BASMAA characterized trash by placing items in buckets measured by fullness without accounting for air space. This significantly overstated the volume and percentage of light materials such as PS foam food ware items and PR Bags in stormwater trash (Cascadia Consulting, email communications, February 28-29, March 1, 2012).

> "The standard deviation of repeated measurements of the same litter measured by volume is 21.2% compared to 3-6% for all other methods of litter measurement". (Institute for Applied Research [IAR], 2007)

While this variability can decline as sample sizes grow, it always tends to be greater than with item counts (IAR, 2007).

Reproducible Field Measurements of Trash Load Volume

If volume is used as a measurement tool, it should always be accompanied by a tally to confirm accurate measurement. In addition, volume should always be measured using natural density to ensure accurate measurement.

Natural density is another term for bank density, a concept that has been historically used in the construction and landfill industries. Natural density is a more descriptive and intuitive term for a concept that addresses the problem of accurately measuring the volume of lighter materials.

One landfill engineer used the following example. Soil in its natural state would weigh about 3,400 pounds per bank cubic yard. When soil is excavated, it is in a less dense state than it was in its bank condition and only would weigh about 2,800 pounds per loose cubic yard. Once soil has been compacted, such as when it has been prepared for use as a clay liner, it becomes much denser and would weigh about 4,100 pounds per compacted cubic yard (Bolton, 1998).

Our firm conducted a pilot test using 2-gallon buckets to illustrate how this concept would have affected the volumetric measure of plastic retail bags (PR bags).

Figure 1 shows that when measuring loose or uncompressed volume, two plastic bags could be deemed as filling the bucket. The firm that conducted the first measure of trash for BASMAA Permittees indicated that they used this method to determine trash volume, which significantly overstates the portion of litter attributable to PR bags.

Figure 2 shows that, by compacting these bags, as many as 50 plastic bags could fit in the same bucket. This would understate the portion of litter attributable to PR bags.

Figure 3 shows that, using the natural volume or bank density of these items, 10 plastic bags fit in the same bucket. Notice how intuitive this method is and how it yields an accurate measure that avoids the two errors of precision shown in Figures 1 and 2.

The natural state for lighter, low-density components of trash consists of placing these items into a bucket and stopping at the point that compacting would be required to add more items.

Figures 1-3: Reproducible Field Measurements of Trash Loads

Figure 1	Figure 2	Figure 3
		
Loose (2)	**Compacted (50)**	**Natural Density (10)**

The characterization methodology used by BASMAA Permittees in 2012 measured volume by placing trash in buckets measured by fullness with no effort to address the significant amount of airspace present (Cascadia Consulting, email communications, February 28-29, March 1, 2012). This means the volume measured would have included a significant amount of air space that would cause the volumes and percentages of light materials such as polystyrene (PS) foam food service items and plastic bags to be overstated considerably. While in ER Planning's pilot, the volume would have been overstated by 500 percent, it is equally possible that, had there been just one loose bag counted, volume may have been overstated by 900 percent.

Others have documented the problems of trying to measure litter accurately and consistently using this type of methodology.

For example, when the Water Research Commission (WRC) of South Africa retained the Department of Civil Engineering at the University of Cape Town (UCT) to study the measurement of litter entering stormwater drainage systems, the study authors identified specific issues with the volume measurements of stormwater trash they observed (Marais).

1. The fullness of traps was inconsistently recorded.
2. The degree of fullness recorded was found in many cases to be almost completely arbitrary.
3. The volume derived from the degree of fullness of the trap was found to be an unreliable indicator of mass as the densities of the litter varied so widely.

Another pitfall of depending solely on volume measurements is that it creates a situation analogous to dead reckoning. The errors caused by allowing use of a flawed trash characterization methodology will be compounded if the State Water Board also allows Permittees to ban materials that are minute portions of litter. This will mislead Permittees into expecting significant reductions in litter that mathematically cannot occur from instituting such bans.

3. Fresh Litter Count

Fresh litter counts depend on collecting and bagging accumulated litter followed by a second survey which seeks to measure fresh litter that has accumulated over a given time period at each specific site. Without accounting for and differentiating the smaller sized items, the resulting data can be misleading. This method has also proved to be problematic as it cannot account for the inconsistent effect of winds, which can move littered items onto a site being surveyed from an area that was not being surveyed and had not been cleaned. Additionally, the level of winds in any given period of time may vary unpredictably, precluding the ability to produce credible data. This method requires two sets of surveys as well, usually 30 to 45 days apart, adding unnecessary project costs that are avoidable.

4. Visible Litter Survey (VLS)

The VLS methodology uses a stratified random site selection process that is scientifically rigorous and reproducible. Littered items are identified and counted, but are not physically removed from the sample site. Large items are tallied separately from small items. This methodology makes better use of Permittees' resources by not requiring a second survey.

When dealing with issues similar to those in California, the Anacostia Watershed Society in Washington, D.C. noted the importance of a visible tally of littered items to supplement other data measurements.

> "The tally count is an important indicator of trash impairment and should be used in conjunction with the total score to assist in site comparisons." (Anacostia, p.8-5)

The WRC study authors noted the value of tallying littered items.

> "Litter counts do however give a better indication of the aesthetic impact of lighter materials such as plastic bags and packaging..." (Marais, 2003)

Trash Characterization Methodologies – Conclusion

VLS tallies have emerged as the de facto standard in California and across the U.S. and Canada. Keep America Beautiful utilized this method for their National Litter Survey (Keep America Beautiful [KAB], 2009). The State of Florida conducted six litter surveys between 1994 and 2001, all of them using the VLS methodology (Florida, 2002, p.10).

Every private firm whose work focuses on conducting litter surveys uses VLS tallies to do so, as did the Cities of San Francisco (2007, 2008 and 2009) and San Jose (2008 and 2009). This survey methodology, selected and used by California's own cities, is the only standard universally recognized by experts in this field.

Major Components of San Francisco Litter: 2007-2009

Table 1 shows the top 15 components of San Francisco litter by count as listed in Table 9 of the 2009 San Francisco Litter Survey. Neither PR bags nor PS foam cups were in the top 15 components of San Francisco litter (HDR, 2009).

Table 1 – Components of San Francisco Litter: 2007-2009

PS Foam Food Service Products in Litter

This section examines all litter surveys conducted in North America since 2000 that separately tallied PS foam food service products to determine the extent to which they are found in litter. Surveys included in this review met the following criteria:

1. Statistically-based quantification and characterization methodologies were used.
2. PS foam food service product components were specifically quantified.
3. Only surveys using VLS tallies were included to ensure comparability of results. The results from other studies are discussed separately.
4. Only surveys conducted since 2000 were included to ensure that the data evaluated is relevant.[2]

Table 2 – PS Foam Food Service Products in Large Litter

Survey	Year	Percent
Rhode Island	2014	1.7%
Edmonton	2013	0.8%
Texas	2013	2.8%
Toronto	2012	1.1%
Edmonton	2012	1.1%
Edmonton	2011	0.1%
Edmonton	2010	0.7%
Alberta	2009	0.7%
San Jose	2008	0.8%
Edmonton	2009	0.2%
KAB National	2009	1.7%
San Francisco	2008	1.1%
San Jose	2008	0.8%
San Francisco	2007	1.7%
Edmonton	2007	0.4%
Alberta	2007	1.1%
Toronto	2006	1.1%
Toronto	2004	1.0%
Peel	2003	0.5%
Durham	2003	0.6%
York	2003	0.3%
Toronto	2002	1.5%
Florida	2002	2.3%
Florida	2001	2.2%
Median Value		**1.1%**

[2] The 1980-81 California Litter Survey is referenced in the "Other Pertinent Litter Surveys" section since it represents the first statistically-based litter survey that tallied what it termed as "Styrofoam" items in California litter statewide.

Table 2 shows each of the 24 litter surveys evaluated by year and the percentage of items identified as PS foam food service products in large litter. These items were rarely observed in small litter, as discussed later in this report. The studies consistently show that PS foam food service products make up a small fraction of litter.

The 2009 KAB National Litter Survey characterized and quantified roadside litter on 288 sites nationwide using 65 separate categories. This survey concluded that all PS foam food service products constituted just 0.6 percent of roadside litter nationwide (KAB, 2009).

Street litter audits conducted in San Francisco showed that PS foam food service products constituted just 1.7 percent of large litter in 2007 (HDR, 2007) and just 1.1 percent in 2008 (HDR, 2008). Those items were not identified as components of small litter.

The most recent comprehensive street litter audit of Toronto in 2012 surveyed 298 randomly selected sites and showed that PS foam food service products constituted just 1.1 percent of large litter (ERP, 2012).

A comprehensive statewide roadside litter study, funded by Florida Department of Environmental Protection, was conducted using 670 randomly selected sites in Florida and showed that all PS foam food service products constituted only 2.3 percent of litter in 2002 (Florida, 2002) and just 2.2% in 2001 (Florida, 2001). Those items were not identified as components of small litter.

PS Foam Food Service Products in Large Litter - Conclusion

Since the data in Table 2 consists of percentages from surveys representing a variety of population sizes and areas, the median is the appropriate measure for determining an average value. For the 24 VLS studies included, the median percentage of PS foam food service products in litter is 1.1 percent. Additional studies come to the same conclusion and are discussed below.

Ocean Conservancy – PS Food Service Items in Beach Litter

Ocean Conservancy sponsors beach cleanup days throughout the U.S. and internationally each year. Based on data from 2,609 U.S. sites surveyed in 44 states in 2013, PS food service items comprised 2.1 percent of all U.S. beach litter (Ocean Conservancy, 2014).

Other Pertinent Litter Studies

Other statistically based litter surveys quantified PS foam products in general, while not specifically identifying the food service portion. While these surveys are not directly comparable to those that broke out the food service portion, they still indicate that PS foam products in general comprise a small portion of litter. Therefore, by extension, the food service portion comprises even less.

2010 Northeast Litter Survey

The 2010 Northeast Litter Survey consisted of three separate and comprehensive statewide litter surveys conducted in Maine, New Hampshire and Vermont. A total of 288 sites were surveyed. All types of PS foam products were tallied, including food service products and packaging. Items specifically tracked included packaging peanuts and blocks; beverage cups, clamshells and plates; ice chests and other food insulating products; construction-related insulation sheets and pieces from retail, commercial and industrial sources.

The percentage of all PS foam products as components of litter in each state was identified:

- Maine: 1.3 percent
- New Hampshire: 1.4 percent
- Vermont: 1.5 percent (ERP 2010)

California 1980-81 Litter Survey

California's 1980-81 litter survey provides important insights into the contribution of PS foam materials to the litter stream in California over time. The California State Solid Waste Management Board underwrote the survey, which was led by Dr. Bruce Bechtol and Dr. Jerry Williams, Professors of Geography at California State University in Chico.

One-third of sites were monitored for large items only. The remaining sites were audited for all litter items larger than one square centimeter in size and formed the basis of litter composition in California. That study characterized PS food service and packaging items together and showed that all of these items, which it termed "Styrofoam", comprised between 2.1 percent and 2.6 percent of all litter (California Geographical Society, 1984).

PS Food Service Items in Litter - Survey Notes

Florida's litter surveys included a separate category for miscellaneous PS foam in large litter. The survey author noted that these items were chunks of PS, not food service items, which were categorized separately (John Schert, personal communications, 2012).

"Other PS Pieces", a minor portion of small litter, consisted primarily of broken pieces of items such as packaging materials or ice chest lids (Personal communications with John Schert, 2012), although it may have also included some pieces of PS foam food service products (Emy Mendoza/San Jose and Allan Mazur/Toronto, personal communications, 2012).

Toronto's 2004 survey noted that small litter is manufactured, in part, by mowing along roadsides before litter is removed, turning several larger pieces of litter into numerous small pieces (Toronto, 2004).

The 2010 Northeast Litter Survey, which surveyed all expanded PS products (packaging and food service) together, made similar observations (ERP, 2010). Thus, cleaning up litter before mowing can significantly reduce the amount of floatable items in litter.

Since the percentage of PS foam food service products in litter is low, the considerable time and financial resources expended to pursue this control measure is unlikely to achieve significant reductions of materials since they are not likely to exist at the levels implied.

PR Bags in Litter

PR Bag Data in Statewide and Citywide Litter Surveys

Statewide litter surveys that characterize litter using statistically based sampling methodologies consistently show that PR bags constitute a small portion of litter. This section relies on the same litter surveys and criteria as the PS foam food service section above.

Table 3 – PR Bags in Large Litter

Study	Year	Percent
Rhode Island	2014	0.5%
Toronto	2002	0.6%
Florida	2002	0.5%
Florida	2001	0.7%
Median Value		**0.5%**

Table 3 shows each of the 24 litter surveys evaluated by year and the percentage of items identified as PR bags in large litter, typically less than 1.0 percent.

The 2009 KAB National Litter Survey characterized and quantified roadside litter on 288 sites nationwide using 65 separate categories. This survey concluded that all type of plastic bags constituted just 0.6 percent of roadside litter nationwide (KAB, 2009).

Percentages for categories such as plastic bags of all types constituted such a minute portion of roadside litter that they were not specifically addressed in the survey report.

Comprehensive citywide street litter audits were conducted in San Francisco before and after PR Bag use had been banned by the City at certain retail merchants. These surveys showed that PR grocery bags constituted only 0.59 percent of litter in 2007 (HDR, 2007) and 0.64 percent in 2008 (HDR, 2008). The percentage of PR grocery bags in litter actually increased slightly after the ban had been put into effect.

A comprehensive street litter audit conducted using 298 randomly selected survey sites in Toronto showed that PR grocery bags constituted only 0.1 percent of litter (MGM, 2006).

A comprehensive statewide roadside litter study, funded by Florida Department of Environmental Protection, was conducted using 670 randomly selected sites in Florida and showed that PR grocery bags constituted only 0.7 percent of litter in 2001 and just 0.5 percent of litter in 2002 (Florida, 2002). Similar surveys had been conducted in Florida in 1994, 1995, 1996 and 1997. In each of those years, PR bags constituted less than 1.0 percent of litter (Florida, 2002).

Litter surveys showing unusually high rates of littered items such as PR bags tend to be conducted by volunteers rather than professional staff. These surveys typically lacked stratified random sampling and standard statistical methods. At times, material categories were not consistent. While such studies have helped create the awareness of litter's impacts, their limitations have, in some cases, resulted in erroneous depictions of PR bags as a significant component of the overall litter stream.

Ocean Conservancy – PR Grocery Bags in Beach Litter

Ocean Conservancy sponsors beach cleanup days throughout the U.S. and internationally each year. For the first time, PR grocery bags were tallied separately in 2013. Based on data from 2,609 U.S. sites surveyed in 44 states, PR grocery bags comprised 2.1 percent of all U.S. beach litter (Ocean Conservancy, 2014).

For 35 of the 44 states, PR grocery bags comprised 2.9 percent or less. For 25 of the 44 states, plastic grocery bags comprised 1.9 percent or less (Nicholas Mallos, email communications, June 10, 2014) including California (1.7 percent), Oregon (1.4 percent) and Washington (0.9 percent).

Other states also showing that PR grocery bags comprised 1.9 percent or less of litter include: Alaska, Colorado, Connecticut, Delaware, Georgia, Hawaii, Kentucky, Maine, Massachusetts, Mississippi, New Hampshire, Nevada, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Vermont and Wisconsin (Nicholas Mallos, Personal communication, June 10, 2014).

PR Bags in Large Litter – Conclusion

Since the percentage of single-use plastic bags in litter is low, the considerable time and financial resources expended to pursue bans of this material as a regulatory source control will not achieve significant reductions of litter in large part because the litter surveys by California's own cities have proven that these items do not exist at the levels implied.

ER Planning 2013 Paper and Plastic Bag Litter Study

Characterization of All Plastic Bags in Litter

To accurately determine the types of plastic and paper bags found in litter, ER Planning conducted three separate citywide litter surveys between December 2011 and January 2012 in two California cities (Oakland and San Francisco) and in Washington, D.C. Each of these cities has taken a different approach to managing bag litter.

Field crews physically surveyed 180 sites (60 in each city), covering a total of 6.48 million square feet. In each city, field crews collected data for all types of plastic and paper bags including the source (e.g., convenience store) and brand label on each bag found in litter.

PR bags from grocery stores, pharmacies, convenience stores and take-out food outlets were each categorized separately. PR bags from all other retail stores such as Dollar Tree and Home Depot were categorized as Other Retail Bags.

Plastic bags were characterized by type, noting the source. Following discussions with the City of San Francisco Public Works and Environmental Health Departments, the following five guidelines were used:

1. Full and Properly Secured Trash Bags

Some full trash bags were properly tied. While they may not have met the requirement for a proper trash set-out, they were not deemed to have been littered and were excluded from this tally for that reason.

2. Empty Trash Bags

Empty or near-empty bags were deemed to have been littered since none of them were observed to be part of, or in close proximity to, a bona fide trash set-out. In addition, most of them were at least partially opened and/or seemed to have been blown about.

3. Partially Open Trash Bags

Several trash bags observed were open and had created litter. Field crews observed bags blowing about from similar set-outs. Thus, these bags were counted as litter.

4. Improperly Secured Trash Bags

In other cases, plastic bags filled with trash were left open and the contents were falling or blowing out, which created more litter. The bags themselves were not considered litter as they were substantially filled. However, if not collected and disposed of properly, they would continue to produce litter. In addition, they could very well become litter themselves, but had not done so yet. Inappropriate trash set-outs are a known cause of negligent litter.

5. Loose Trash Bags

Other bags, however, were carelessly set out in a manner that created opportunities for wind-blown litter, but were not littered yet. Other items from these set-outs had already become and were counted as litter.

Plastic Bags in Litter by Source and Type

Table 4 shows that sandwich bags were the most littered type of plastic bag in San Francisco (43 percent), while plastic bags from Other Retail stores were the highest in D.C. (24 percent) and Oakland (34 percent). Full and empty trash bags were a noticeable portion of littered plastic bags in all three cities (38 percent in San Francisco, 26 percent in D.C. and 12 percent in Oakland), averaging 19 percent overall.

Table 4 – All Littered Plastic Bags by Source and Type

Category	SF	DC	Oak	All
Trash - Full	18%	14%	7%	10%
Trash - Empty	20%	12%	5%	9%
Grocery	2%	10%	4%	5%
Other Retail	8%	24%	34%	29%
Pharmacy	0%	2%	4%	3%
Conv. Store	0%	5%	8%	7%
Take-out Food	8%	11%	6%	7%
Sandwich	43%	0%	6%	9%
Bulk Food	0%	22%	24%	21%
Subtotal	**100%**	**100%**	**100%**	**100%**

PR Bags in Litter – Branded and Unbranded

Some communities have chosen to exempt smaller and independent stores when crafting ordinances restricting the use of PR bags. The high percentage of unbranded PR bags observed in all three cities surveyed suggests that smaller, independent stores are the likely source for a significant number of these bags. Unbranded or "Thank You" bags are frequently used by smaller stores. Most large chains use bags with their logos.

Table 5 shows the percentage of PR bags in each city that were unbranded. The highest percentage of unbranded PR bags was observed in San Francisco (78 percent). Approximately half of the PR bags littered in Oakland (50 percent) and Washington D.C. (49 percent) were unbranded.

Cities that implement bag ordinances while exempting independent stores do so at their own peril, since more than half of all PR bags surveyed in these three cities represented bags used by independent stores (unbranded).

Table 5 – Unbranded PR Bags in Litter

City	Unbranded PR Bags	All PR Bags	Percent Unbranded
Oakland	75	149	50%
San Francisco	7	9	78%
Washington, D.C.	24	49	49%
All Cities	**106**	**207**	**51%**

Material Bans

The State Water Board notes that California communities have implemented numerous local ordinances banning certain consumer products, implying that those ordinances are effective in reducing overall littering in California (State Water Board [SWB], p. 7). The State Water Board goes further to specifically encourage bans of single-use carryout bags and PS foam food service products (SWB, p. 16) and highlights these bans throughout the document without providing any evidence that these bans are effective in reducing litter (SWB, p. 79).

The State Water Board even proposes to extend the compliance deadlines for Permittees who put these product bans in place (SWB, p. 158) as though material bans will automatically reduce litter effectively when all evidence from litter surveys conducted by California cities clearly prove that these bans have not reduced overall litter.

The State Water Board notes that the City of San Francisco banned the use of single-use plastic bags in grocery stores and pharmacies in 2006 (SWB, p. A-18). The City of San Francisco conducted three statistically-based litter surveys in 2007, 2008 and 2009. These surveys showed that PR bags and PS food service products were insignificant portions of litter. The City of San Jose conducted a statistically-based litter survey in 2008 and the results were virtually identical to those conducted in San Francisco.

No statistically-credible visible litter survey ever conducted in California or anywhere else supports the notion that material bans reduce overall litter.[3]

In fact, statistically-based surveys that have been conducted by cities in California prove precisely the opposite and prove two facts clearly:

1. PR bags and PS food service products are both insignificant portions of litter in these California cities, and
2. Material bans have never been shown to reduce overall litter.

Regarding the effect of San Francisco's ban on single-use plastic bags, "the city hasn't collected any litter data since the 2009 survey", according to Guillermo Rodriguez, a spokesman for the city's environment department (Santa Cruz, 2013). However, surveys conducted in 2008 and 2009 had shown no change in response to the ban.

[3] A San Jose memorandum implied that single-use plastic bags in the City's litter was reduced since the City's ban went into effect, citing post-ordinance data apparently collected by city staff in 2012. But their post-ordinance study only surveyed 31 sites, while the pre-ordinance study surveyed 107 sites (San Jose, 2012). Thus, results from these two surveys are not statistically comparable. San Jose further estimated an 11.9 percent reduction in stormwater trash and attributed this estimate solely to the City's ban on single-use plastic bags (san Jose, 2012b, p. 10-7), but the City's data used the flawed BASMAA trash characterization (San Jose, 2012a, p.5) and significantly overstated the volume of single-use plastic bags in its stormwater trash.

> "San Francisco's ban effected no measurable change in plastic bag litter, at least in the first two years." (Santa Cruz, 2013)

The State Water Board admits that product bans simply change the type of litter and that San Francisco's litter surveys showed "no overall reduction in litter (or trash to the waterways)" (SWB, p. A-18). It goes on to admit that such bans could double the amount of greenhouse gas emissions, double energy use and quadruple the amount of waste caused by material substitutions (SWB, p. A-18).

Oddly, the State Water Board cites a University of California study and notes that

> "Similarly, bans on polystyrene food containers would cause a shift to materials with other significant environmental impacts." (University of California at San Diego [UC-SD], 2006)

In fact, the University of California study goes on to state that:

> "...Styrofoam cups are better than paper from an environmental standpoint..." (UC-SD, 2006)

Yet, despite acknowledging these risks and the significant environmental impacts they will likely have, the State Water Board proposes to encourage Permittees to enact these ineffective ordinances. The State Water Board should be able to reasonably foresee that material bans are an ineffective method of compliance.

Analysis of Litter Rates and Material Bans in Place

A statistical analysis of BASMAA's 2012 trash characterization showed that city bans on plastic grocery bags and PS foam food and beverage (F&B) products had statistically insignificant effects on the volume of PS foam F&B products in stormwater trash (ERP, 2012).

In these tables, sample size refers to the number of sites where trash was counted. The mean values represent the average amount, in gallons, of plastic grocery bags or PS foam F&B found at these sites measured in gallons without accounting for air space (i.e. uncompressed volumes) (ERP, 2012).

As shown in Table 6, the average volume of plastic grocery bags was only slightly lower where a city ban existed (0.14 gallons) than where one did not exist (0.19 gallons), and this difference was statistically insignificant.

The same was true for PS foam F&B, where the values were even closer (0.1 gallons where a ban existed and 0.15 gallons where no ban existed).[4]

If material bans had been effective, these values would have been much further apart.

Table 6 – Statistical Analysis: City Bans vs. No Bans

	Plastic Grocery Bags		PS Foam F&B	
Value	**Yes**	**No**	**Yes**	**No**
Sample Size (# of Sites)	110	105	110	105
Mean Value (gallons)	0.14	0.19	0.14	0.19

High Litter Rates in Cities with Bans in Place

Some of the sites with the highest volumes of plastic grocery bags and PS FF&B products were in cities that had bans of these items in place at the time that BASMAA's trash characterizations were conducted.

As shown in Table 7, half of the six sites with the highest volumes of PS FF&B products in litter had citywide bans in place at the time these characterizations were conducted.

[4] The highest trash volume, found on site RI01, was 42.84 gallons, while the second highest trash volume, found on site SP01 was only 18.27. Thus, site RI01 constituted an extreme outlier and, in accordance with good statistical practice, was excluded from the analysis.

Table 7 – High Litter Volumes with City Bans – PS Foam F&B Products

#	BASMAA Site ID	PS Foam F&B (gallons)	City	County	PS Foam F&B Ban (y/n)
1	RI01	3.56	Richmond	Contra Costa	y
2	SM07	1.67	San Mateo	San Mateo	
3	RI03	1.33	Richmond	Contra Costa	y
4	SL25	1.22	San Leandro	Alameda	
5	BR04	1.00	Brentwood	Contra Costa	
6	OK02	1.00	Oakland	Alameda	y

Similarly, as shown in Table 8, half of the six sites with the highest volumes (measured in gallons) of PR bags in litter also had citywide bans in place at the time these characterizations were conducted. These sites showed no relationship between the litter rates of PR bags or PS foam food service products and citywide bans that had been put into effect.

Table 8 – High Litter Volumes with City Bans – Plastic Grocery Bags

#	BASMAA Site ID	Plastic Grocery Bags (gallons)	City	County	Plastic Grocery Bag Ban (y/n)
1	RI01	4.00	Richmond	Contra Costa	y
2	SM12	1.33	San Mateo	San Mateo	
3	SP01	1.11	San Pablo	Contra Costa	y
4	SJ08	1.11	San Jose	Santa Clara	
5	SJ22	1.11	San Jose	Santa Clara	
6	SJ38	1.11	San Jose	Santa Clara	y

Substitution Effect

Since littering is a behavioral based problem, banning one material only means that another material will be used instead, but the littering problem is unaffected. This is clearly shown in litter survey data from three comprehensive litter surveys conducted in San Francisco (2007-2009).

PS food service items were banned by a November 2006 ordinance that took effect in June 2007. Since the 2007 field survey was conducted in April 2007, before the ban became effective since and trash accumulates over time, the 2007 data fairly represents pre-ban conditions.

Notice in each of the categories that litter was not reduced following the ordinance. In fact, litter for each category of food service item actually increased noticeably.

PS Foam Food Service Items and Substituted Materials

Table 9 summarizes the impact of substituting other materials for PS food service items by count. While the number of PS components was reduced by 30 percent, the number of paper components increased by 163 percent and the number of items made of other materials or other plastics increased by 253 percent.

Overall, the ban on PS food service items corresponded to an increase of 59 percent in the number of littered food service items as shown in Table 9.

Table 9 – PS Foam Food Service Items in San Francisco Litter

Littered Food Service Items	2007	2008	2009	Change	% Change
Polystyrene	67.5	45	47	-20.5	-30%
Paper	44.5	73.5	117	72.5	163%
Other Plastics/Other Materials	7.5	20	26.5	19	253%
Total	**119.5**	**138.5**	**190.5**	**71**	**59%**

PS Foam and Substituted Materials – Hot Beverage Cups

While the number of littered PS hot beverage cups was reduced by 36 percent, the number of littered paper hot beverage cups increased by 142 percent resulting in an overall increase of 45 percent in all littered hot beverage cups as shown in Table 10.

Table 10 – Hot Beverage Cups in San Francisco Litter

Littered Hot Cups	2007	2008	2009	Change	% Change
Polystyrene cups (foam)	43	31	27.5	-15.5	-36%
Paper Cups (Hot)	36	56.5	87	51	142%
Total	**79**	**87.5**	**114.5**	**35.5**	**45%**

The amount of fast food plates, clamshells and trays tallied were too small to analyze meaningfully by component.

Material Bans - Conclusion

If the State Water Board decides to allow material bans, despite the clear evidence that they are not effective in reducing overall litter, then such material bans should require rigorous demonstration, monitoring, and testing to assess whether the bans are effective at all in reducing litter.

Permittees must provide annual reports to their Water Board demonstrating, through the use of statistically credible surveys, that any material bans put in place have resulted in an actual net reduction of overall litter and stormwater trash.

The California Integrated Waste Management Board recommended in 2004 that California conduct a statewide litter survey to identify the types and amounts of litter (CIWMB, 2004).

Doing so now and thereby establishing credible baseline data, will provide sorely needed guidance before the State Water Board allows communities to impose material bans without any credible basis for doing so.

Compliance Monitoring

Proposed Tracks

Track 1 provides a clear trash abatement strategy requiring the use of full-capture systems, which have proven very effective in Los Angeles. Although it is clear and unambiguous, it demands full reporting by Permittees.

Track 2 is much more ambiguous, allowing Permittees to propose various regulatory controls, including material bans that have never been proven to effectively reduce litter. Despite the risk-laden and unstructured approach, there is no specific monitoring or testing required - only vague direction that Permittee demonstrate that its approach is effective.

Track 2 should require much stricter and more extensive monitoring, testing and reporting than Track 1 simply because Track 2 is innately ambiguous and therefore vulnerable to deficiencies and limitations that would not be present with Track 1.

How could compliance be credibly determined? Using the combination of controls described in the Trash Amendments would require more complex monitoring and more rigorous reporting than Track 1, rather than less.

If the State Water Board decides to go further and allow the use of material bans as an institutional control, then the Board must require Permittees to put a rigorous monitoring system in place to ensure that Permittees are achieving the mandated trash reduction and that those reductions are attributable to the material bans.

Such a monitoring system would be based on special surveys that would be conducted on an annual basis by independent third party professional firms with significant expertise in litter and/or stormwater trash. These firms should be selected by the State Water Board. The litter and/or stormwater surveys should utilize the methodology employed by both San Francisco (2007-2009) and San Jose (2008) with a similar reporting format to provide consistency.

In addition, if multiple controls are put in place such as material bans and enhanced street sweeping, Permittees must validate the effectiveness of each control and to help determine which components of their controls are driving any changes in the system. This would require a characterization and quantification survey of the materials captured by street sweeping equipment.

This will help the State Water Board and the Permittees ensure the credible data monitoring and reporting that Track 2, by its very nature, requires. To do less would constitute an abdication of responsibility on the part of the State Water Board and a failure to provide the guidance needed that will lead to the abatement of litter entering stormwater systems.

Los Angeles Exemption

The Trash Amendments propose to exempt waters within the jurisdiction of the Los Angeles Water Board (LAWB). LAWB adopted fifteen TMDLs with a numeric target of zero trash (SWB, p.22).

The LAWB has put significant controls in place using a clear strategy that has already proven to be extremely effective achieving a 90 percent reduction in trash well ahead of schedule.

> As of March 2012, the City has retrofitted 22,133 catch basins with trash capture or deflecting devices in the Los Angeles River Watershed as well as three netting systems certified as full capture devices have been installed strategically in the Watershed. With these structural devices alone, the City has reduced its trash discharge to the Los Angeles River by approximately 90%, several years ahead of the final TMDL compliance milestone (Los Angeles, 2012).

The successful trash reductions in Los Angeles demonstrate that full-capture structural controls are a proven method of significantly reducing trash discharges.

Other Institutional Controls

Certain aspects of the proposed Trash Amendments will help California communities address litter and stormwater trash more effectively.

High Density Generation Areas

The focus of efforts on high-density generation areas will help Permittees to apply their funding to areas that are most problematic and will likely provide the best opportunity to reduce littering efficiently and make the best use of their funding.

Anti-Littering and Illegal Dumping Enforcement

Enforcement of anti-littering and illegal dumping ordinances is a significant key to reducing litter. For example, States and communities can impose fines for vehicles traveling with untarped loads. Solid waste management facilities can also add surcharges for untarped loads.

Both of these strategies can help achieve significant reductions in litter. The State Water Board should encourage its communities and Permittees to enact and enforce such discharge-focused ordinances which direct their efforts to the specific sources of litter that each community seeks to reduce.

In an effort to reduce littering from untarped vehicle loads, waste management facilities in New York State institute surcharges for untarped vehicles. In addition, drivers are subject to fines of up to $1,000 by the New York State Department of Environmental Conservation for these violations. This best management practice can help reduce this source of litter.

George L. Kelling, Professor in the School of Criminal Justice at Rutgers University and a Research Fellow in the Kennedy School of Government at Harvard University, called attention to importance of enforcement with his landmark Broken Windows theory (Kelling, 1996).

Kelling was able to prove the correlation between enforcement and reductions in crime under the auspices of the Manhattan Institute (Sousa and Kelling, 2002). Kelling later applied that theory to the importance of enforcing anti-littering ordinances (Kelling, 2006).

An ongoing challenge of litter reduction strategies is the perceived reluctance of enforcement officials and courts to consider litter offenses a priority. Enforcement officers are tasked with significant responsibilities and littering is not commonly observed. However, when officers do observe littering, having programs and training in place can benefit enforcement officials.

In a speech given at the 2006 Governor's Litter Summit in Georgia, Kelling noted that people who commit offenses such as jumping subway turnstiles and littering have a higher than average rate of outstanding warrants. Thus, enforcement of anti-littering ordinances can provide useful tools to enforcement officers.

In a 1971 survey of 1,035 police departments across the U.S., 86 percent believed that enforcement could be effective if enforcement agencies and courts were trained on the implications of litter in their communities.

This sentiment was echoed in 2006 at Georgia's litter summit. When implemented with public education and cleanup efforts, enforcement can serve as an effective tool. Sentencing offenders to clean up litter was recommended.

Effective enforcement cannot be dependent on signs alone. Anti-litter signage without enforcement can result in higher litter rates as it tends to empower violators, sending a message that a community is powerless to control littering (KAB, 2007).

One factor in successful enforcement is the use of courts specifically designed to handle environmental offenses. The City of Memphis and Shelby County, TN is considered to be the national leader in the environmental court movement. The court handles caseloads relating to illegal dumping, littering and other environmental property issues, that might have otherwise fallen thru the cracks of the criminal justice system. This type of court is more supportive of environmental crimes and has higher conviction rates. More than 70 similar courts have been put in place nationwide (US Conference of Mayors, 1999).

The California Integrated Waste Management Board (CIWMB) recommended elevating littering to a civil offense:

> "The Legislature should consider making litter a civil offense, to facilitate issuing litter tickets. Legislation could authorize financial incentives, perhaps from proceeds of violation tickets, to individuals and/or organizations that identify violators with appropriate proof (such as videotape or witness testimony) that results in tickets being issued." (CIWMB, 2004)

Improved Trash Bin/Container Management

The effectiveness of improved trash receptacles was proven in several studies conducted by William C. Finnie, Ph.D. One study, testing the effect of decorated litter receptacles placed on each block of an urban area in Richmond, VA, found that litter was reduced by a statistically significant 16.7 percent (Finnie, 1973). A similar study of attractive receptacles in St. Louis found that liter was reduced by 14.7 percent (Finnie, 1973).

Finnie also found that conspicuously decorated trash receptacles at rest areas along highways reduced litter by 28.6 percent and that these reductions were apparent six miles from the receptacles. Similar results were obtained in subsequent studies by Dr. Scott Geller (Geller, 1982) as well as Cone and Hayes (Cone and Hayes, 1980).

Appropriately placed litter receptacles in commercial and public areas can also reduce littering rates. The City of Long Beach, CA used strategically placed receptacles to reduce litter in storm-water runoff. Receptacles were placed in business areas, bus stop and recreational areas (Long Beach, 2001).

According to the City's Storm Water Management Program Manual, approximately 1,000 litter receptacles were placed along public street frontage and serviced at least once per week. The city also placed approximately 2,100 litter receptacles in recreational areas and ensured that they were serviced regularly (Long Beach, 2001).

For litter receptacles to effectively reduce litter, internal municipal procedures must clearly ensure they are maintained in a timely manner. Since properly maintaining and emptying trash and litter receptacles can be time-consuming and expensive, public/private partnerships can help to alleviate these costs, provided there is proper oversight by the local government.

Overfilled receptacles that are not properly maintained create precisely the type of litter that is likely to enter stormwater systems.

Enhanced Street Sweeping in HD Areas

Focusing more extensive street sweeping efforts on high-density generation areas can help reduce litter entering stormwater systems.

> "Frequent street cleaning can dramatically reduce the quantity of street litter reaching the drainage system – even where there is a generally adequate refuse removal service" (Armitage, 2001).

A New York City study of street cleaning practices found that augmenting baseline street cleaning (mechanical sweeps twice per week) with manual sweeping of each block face once per day, six days a week reduced floatable litter 42 percent by count, 51 percent by volume and 64 percent by weight (HydroQual, 1996). Swedish scientists, evaluating the efficacy of street sweeping, found that the optimal efficiency was achieved by sweeping twice per week (German and Svensson, 2001).

Enhanced street cleaning should be implemented regardless of other reduction measures used since it can reduce the required maintenance of other technology-based controls.

Alternative Control Measures

In addition to the institutional controls identified in the State Water Board's proposal, we have identified a number of additional opportunities to reduce trash discharges that have been proved effective in other contexts.

Insufficient Securing of Collection Vehicle Loads

A nationwide litter survey found that insufficiently secured trash and recycling collection vehicles are a significant source of litter (ERP, 2010). Such vehicles along with untarped pickup trucks were estimated to be the source of 16.4 percent of the 51.2 billion pieces of roadside litter identified nationwide (KAB, 2009, p. 3-8). That study also found a significantly higher rate of litter on roadways within two to five miles of solid waste and recycling facilities than on other roadways (KAB, 2009, p. 3-21).

A pilot study of spillage from rear-loading trash collection vehicles in 2007 found that spills occurred at 202 (14.6 percent) of the crews' 1,385 residential trash collection stops. However, only 102 (slightly more than half) of these spills were cleaned up by the collection crew. The remaining 100 spills were left as litter. This meant that 7.2 percent of trash collection pickups resulted in litter that rains could wash into stormwater drains (ERP, 2009).

Other researchers confirm that trash collection vehicles deal with this problem.

> "Even under ideal conditions, collecting hundreds of tons of refuse can be a messy business. A certain amount of spillage is unavoidable. However, in most situations collectors are able to 'clean up their mess.' Sometimes, inclement weather causes problems on collection day—wind is the primary culprit. In order to reduce litter, the local government should require that refuse containers have lids. Each collection vehicle should be required to carry a shovel, broom, and dust pan and remove litter associated with the refuse/recycling operation (Scarlett and Sloan, 1996)."

The State of Florida, which conducted statewide litter surveys in 1994-1997 and 2001-2002, documented litter due to spills from front-loading trash collection vehicles in 2003. Researchers observed the collection of 337 commercial dumpsters over 1,277 miles and found that littering spills occurred at 28.8 percent spills at collection sites and on public streets or highways after 20.8 percent of trash pickups (Florida, 2003). Recycling collection vehicles were also found to be a source of litter for precisely the same reason (Florida, 1999).

San Francisco's departments of Public Works and Environmental Health reported in 2012 that, while collection vehicles are inspected, collection routes are not monitored for this type of spillage although this was discussed as a known source of litter nationwide (Dept. of Public Works and Dept. of Environmental Health, personal communications, 2012).

Recommendations

- Since the City of Los Angeles has achieved a 90 percent reduction in litter entering its stormwater system, it should be considered a model to be emulated by other California communities so other communities can achieve similarly successful litter abatement.

- Track 2 should be modified to preclude material bans due to a lack of credible evidence demonstrating their effectiveness in reducing overall trash.

- Track 2 should be less ambiguous overall and should require a level of reporting and monitoring at least equivalent to Track 1.

- Communities should focus their efforts on high-density generation areas when fiscal constraints preclude their ability to address stormwater controls community-wide.

- Due to known problems using volume-based quantification methodologies, the VLS methodology, considered by all experts in the field to be the standard for measuring litter, should always be used when quantifying litter and stormwater trash.

- Litter and stormwater trash surveys should always be performed by trained professionals and the methodologies used should always be transparent.

- Trash and recycling collection vehicle routes should be monitored to determine the extent to which they employ practices that contribute to litter that could enter stormwater systems.

- Innovative options for financing stormwater technology-based controls should be explored in order to assist Permittees that may have budgeting constraints.

References and Citations

2006 Governor's Litter Summit Agenda. Retrieved from: http://www.accg.org/library/litter_summit_agenda.pdf

A mixed bag: Are California's bans on plastic bags working? Paul Gabrielsen. Santa Cruz Sentinel. June 14, 2013. Accessed from: http://www.santacruzsentinel.com/ci_23474167/mixed-bag-are-californias-bans-plastic-bags-working

Action Research Model. Human Resources Institute. Morristown, NJ. 1975.

Allison, R.A., T.A. Walker, F.H.S. Chiew, I.C. O'Neill and T.A McMahon. From Roads to rivers: Gross pollutant removal from urban waterways. Report 98/6. Cooperative Research Centre for Catchment Hydrology. Victoria, Australia. May 1998.

Anacostia Watershed Trash Reduction Plan - Chapter 8. (2008). Anacostia Watershed Society.

Armitage, N. 2001. The removal of Urban Litter from Stormwater Drainage Systems. Ch. 19 in Stormwater Collection Systems Design Handbook. L. W. Mays, Ed., McGraw-Hill Companies, Inc. ISBN 0-07-135471-9, New York, USA, 2001, 35 pp.

BASMAA (2012a). Preliminary Baseline Trash Generation Rates for San Francisco Bay Area MS4s - Technical Memorandum. Eisenberg, Olivieri and Associates. 2012.

BASMAA (2012b). Trash Load Reduction Tracking Method - Assessing the Progress of San Francisco Bay Area MS4s Towards Stormwater Trash Load Reduction Goals Technical Report (Version 1.0). Eisenberg, Olivieri and Associates. 2012.

Bissonnette, Stephen. The Impact of Collection of Recyclables and Refuse on a Suburban Neighborhood. Florida Center for Solid and Hazardous Waste Management. 1999

Bolton, Neal. MSW Management Magazine. (1998) Landfill Manager's Notebook. Soil Conversion Factors. May 1998.

Bechtol, Dr. Bruce and Williams, Dr. Jerry. California Geographical Society (1984). Litter in California: Results of the 1980-1981 Statewide Litter Survey.

California Integrated Waste Management Board. Board Meeting Agenda, Resolution: Agenda Item 14. Sacramento, CA. June 12, 2007.

California Integrated Waste Management Board. Contractor's Report to the Board. Statewide Waste Characterization Study. December 2004.

Caltrans. Caltrans Comprehensive Protocols Guidance Manual. CTSW-RT-03-105.51.42. November 2003.

Caltrans. State of California - Business, Transportation and Housing Agency. Department of Transportation (2000). California Department of Transportation District 7 Litter Management Pilot Study – Final Report.

Cialdini, R., Reno R., Kallgren C. A Focus Theory of Normative Conduct. Journal of Personality and Social Psychology, 58, 1015-26. 1990.

City of Los Angeles Department of Public Works. Bureau of Sanitation and Department of Water and Power. Water IRP 5-Year Review FINAL Documents, June 2012.

City of San Jose Memorandum. From Kerrie Romanow to Transportation and Environment Committee. November 20, 2012.

City of San Jose Memorandum. From Kerrie Romanow to Transportation and Environment Committee. January 3, 2012.

City of San Jose Stormwater Management Annual Report 2011-2012. Santa Clara Valley Urban Runoff Pollution Prevention Program. September 2012.

Clean Water Action. Taking Out the Trash: A Source Reduction Pilot Project – 2010-2011 Monitoring Results. July 2011.

County of Los Angeles, Department of Public Works, Environmental Programs Division. An Overview of Carryout Bags in Los Angeles County: A Staff Report to the Los Angeles County Board of Supervisors. Alhambra, CA. August 2007. Retrieved from: http://dpw.lacounty.gov/epd/PlasticBags/PDF/PlasticBagReport_08-2007.pdf

Environmental Problems/Behavioral Solutions. Chapter 5 – Environmental Aesthetics: Litter and Environmental Design. John D. Cone and Steven C. Hayes. 1980.

Draft Final Anacostia River Watershed Trash TMDLs. Maryland Department of the Environment, et al. August 2010.

Environmental Resources Planning, LLC. Littering from Residential Trash Collection Vehicles. Pilot Study. April 2009.

Environmental Resources Planning, LLC. 2010 Northeast Litter Survey. A Baseline Survey of Litter at 288 Street and Highway Locations in Maine, New Hampshire and Vermont. Conducted for American Beverage Association. July 2011.

Environmental Resources Planning, LLC. 2014 Rhode Island Litter Survey. A Survey of Litter along 94 Roadways, Beaches, Docks and Harbors in Rhode Island. Conducted for Greater Providence Chamber of Commerce. April 2014.

Environmental Resources Planning, LLC. Technical Assessment of BASMAA 2012 Documents. Conducted for American Chemistry Council. March 2012.

Environmental Resources Planning, LLC. Toronto Streets Litter Audit. A Survey of Litter at 298 Street Locations in Toronto, Ontario. Conducted for City of Toronto Solid Waste Management Services Division. November 2012.

Finnie, William C., PhD, Field Experiments in Litter Control. Environment and Behavior. Sage Publications. Pgs. 123-144. June 1973.

Florida Center for Solid and Hazardous Waste Management. The Florida Litter Study: 2001 Conducted for The Florida Legislature and Florida Department of Environmental Protection. June 2001.

Florida Center for Solid and Hazardous Waste Management. 2003. Litter from Solid Waste Collection Trucks. April 2003.

Florida Center for Solid and Hazardous Waste Management. Roadside Litter in Florida: 2002 for the Florida Legislature and Florida Department of Environmental Protection. May 2002.

Frequently Asked Questions: Why Does the International Stormwater BMP Database Project Omit percent removal as a measure of BMP performance? International Stormwater BMP Database. Retrieved from: http://www.bmpdatabase.org/Docs/ /FAQPercentRemoval.pdf

Geller, E. Scott, Winett, Richard A., and Everett, Peter B. Preserving the Environment - New Strategies for Behavior Change; Chapter 3: Litter Control, Pergamon Press, Inc. Elmsford, NY. 1982.

GeoSyntec Consultants and Urban Water Resources Research Council (UWRRC) of ASCE. Urban Stormwater BMP Performance Monitoring. EPA-821-B-02-001. April 2002.

Haag, Tim, et al. Paper or Styrofoam: A Review of the Environmental Effects of Disposable Cups. University of California - San Diego. 2006.

HDR et.al. The City of San Francisco Streets Litter Audit 2007 Prepared for The City and County of San Francisco Department of Environment. June 2007.

HDR et al. The City of San Francisco Streets Litter Re-Audit 2008 Prepared for The City and County of San Francisco Department of Environment. July 2008.

HDR et al. The City of San Francisco Streets Litter Re-Audit 2009 Prepared for The City and County of San Francisco Department of Environment. September 2009.
Keep America Beautiful. National Visible Litter Survey and Litter Cost Research Study – Final Report. September 2009.

Kelling, George and Catherine M. Coles. Broken Windows. Simon & Schuster. New York. 1996.

Litter from Solid Waste Collection Trucks. Florida Center for Solid and Hazardous Waste Management. April 2003.

Long Beach Storm Water Management Program Manual. Section 4.1.1, Revised. August 2001.

Marais, Mark; Armitage, Neil, and Wise, Chris. Department of Civil Engineering at the University of Cape Town, South Africa. The Measurement and Reduction of Urban Litter Entering Stormwater Drainage Systems: Paper 1 – Quantifying the Problem Using the City of Cape Town as a Case Study. Water Research Commission. 2003.

Maryland Department of the Environment (MDE) et al. Total Maximum Daily Loads of Trash for the Anacostia River Watershed, Montgomery and Prince George's Counties, Maryland and the District of Columbia: Draft Final. August 2010.

MGM Management. Alberta Transportation Litter Audit Final Report. Prepared for Alberta Transportation Highway Operations Technical Standards Branch. Edmonton, AB. August 2009.

MGM Management. Alberta Highway Litter Characterization Study. Prepared for Recycling Council of Alberta with support from Alberta Environment, Beverage Container Management Board, Alberta Dairy Council Milk Container Recycling Program. August 2007.

MGM Management. Region of Durham Litter Survey. Prepared for the Regional Municipality of Durham Waste Management Division. September 2003.

MGM Management. Region of Peel Litter Survey. Prepared for the Regional Municipality of Peel Waste Management Division. September 2003.

MGM Management. City of Toronto Streets Litter Audit. Prepared for The City of Toronto Works and Emergency Services, Solid Waste Management Services Division. September 2002.

MGM Management. City of Toronto Streets Litter Audit. Prepared for The City of Toronto Works and Emergency Services, Solid Waste Management Services Division. September 2004.

MGM Management. City of Toronto Streets Litter Audit 2006. Prepared for Citizen Focused Services B, Solid Waste Management Services Division. October 2006.

MGM Management. The Regional Municipality of York 2003 Litter Survey. Prepared for The Regional Municipality of York Solid Waste Management Branch Transportation & Works Department. September 2003.

Newman, Thomas L., P.E. et al. City-wide Floatables Study. Conducted for New York City Department of Environmental Protection, Bureau of Environmental Engineering, Division of CSO Abatement. HydroQual, Inc. 1992.

Newman, Thomas .L., W.M. Leo, J.A. Mueller, and R. Gaffoglio. Effectiveness of Street Sweeping for Floatables Control. Proceedings for Urban Wet Weather Pollution: Controlling Sewer Overflows and Stormwater Pollution. Quebec. June 16-19, 1996.

Patterson, Larry A. and Shelli St. Clair. Memorandum: Single-Use Plastic Carryout Ban and Polystyrene Food Ware Ban. February 1, 2012.

Preliminary Baseline Trash Generation Rates for San Francisco Bay Area MS4s - Technical Memorandum, EOA, Inc., February 1, 2012.

Rathje, William J. and Murphy, Cullen. Rubbish! The Archaeology of Garbage. Harper Collins. 1992.

SAIC & MGM Management. The City of San Jose 2008 Street Litter Audit Report. Prepared for City of San Jose Environmental Services Department. February 2009.

Scarlett, Lynn and Sloan, Jim. Solid-Waste Management - A Guide to Competitive Contracting for Collection. Aug 1996.

Schmidt, J.H., Final Report on a National Survey of Litter Law Enforcement, International Association of Chiefs of Police, September 1971.

Silverzweig Associates, Inc. A Summary of the Ten Year Assessment of the Behavioral Foundations of the Keep America Beautiful System. December 1986.

Sousa, William H. and George L. Kelling. Policing Does Matter. City Journal. Winter 2002. Street Sweeping and Sediment Guidance. Florida DEP. May 2004.

State Water Resources Control Board. California Environmental Protection Agency.

Division of Water of Quality. (2014). Draft Amendments to Statewide Water Quality Control Plans to Control Trash.

Stein, Steven R. Georgia 2006 Visible Litter Survey - A Baseline Survey of Roadside Litter. Conducted for Keep America Beautiful and Georgia Department of Community Affairs. RW Beck. January 2007.

Stein, Steven R. Tennessee 2006 Visible Litter Survey - A Baseline Survey of Roadside Litter. Conducted for Tennessee Grocers & Convenience Store Association. RW Beck. February 2007.

Stein, Steven R. and Ferguson, Kristian C. 2007. Litter: Literature Review. Conducted for Keep America Beautiful. RW Beck. July 2007.

Stein, Steven R. and Syrek, Daniel B. New Jersey Litter Survey. A Baseline Survey of Litter at 94 Street And Highway Locations. Conducted for New Jersey Clean Communities Council. Gershman, Brickner and Bratton, Inc. 2004.

Street Sweeping as a Pollutant Control Measure. Jonas German and Gilbert Svensson. Department of Water Environment Transport. Chalmers University of Technology. Goteborg, Sweden. Novatech 2001.

Syrek, Daniel B. Methods of Litter Measurement (Report S-13.9 Revised Jan 2007). Institute for Applied Research. 2007.

Transmittal Letter – Progress Report – Trash Baseline Loads and Load Reduction Tracking – MRP Provision C.10.a(ii), James Scanlin, Tom Dalziel, et al., February 1, 2012

Trash Load Reduction Tracking Method – Assessing the Progress of San Francisco Bay Area MS4s Towards Stormwater Trash Load Reduction Goals – Technical Report (Version 1.0), EOA, Inc., February 1, 2012

Turning the Tide on Trash – International Coastal Cleanup 2014 Report. Ocean Conservancy. May 2014.

Tyack, Nicholas. A Trash Biography. Friends of the Los Angeles River Trash Report 2004-2011. November 2011.

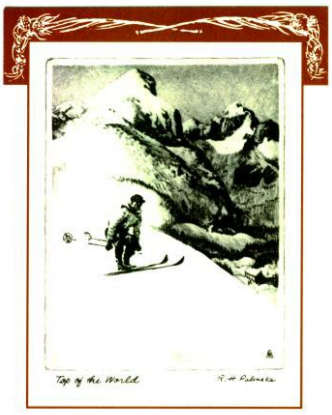
U.S. Conference of Mayors Conference on Building Clean, Livable Cities (1999).

US-EPA National Pollutant Discharge Elimination System (NPDES). Retrieved from: http://cfpub.epa.gov/npdes/stormwater/urbanbmp/bmptopic.cfm#percentremoval

Use and Disposal of Polystyrene in California- A Report to the California Legislature. California Integrated Waste Management Board. December 2004.

Appendix A - CV Brief

624 Main Street, Suite B ● Gaithersburg, MD 20878 ● Office: (240) 631-6532 ● sstein@erplanning.com



Steven R. Stein is Principal of Environmental Resources Planning LLC (ER Planning), North America's most experienced private firm in the field of litter–related and commodity characterization studies and litter's effects on our communities.

ER Planning's roots in the environmental field go back to the 1800s when Mr. Stein's grandfather worked in forestry and then, in 1913, in recycling. Steven has worked in the fields of recycling and solid waste management since 1972 for public, private, trade association and consulting.

His work with litter, which began in 1987, has been featured on ABC's Good Morning America and NPR as well as in the New York Times, National Geographic Magazine and Time Magazine. Field crews under his direction have physically surveyed litter along more than 21 million square feet of roadways and recreational areas.

ER Planning organized and sponsored the 2011 National Litter Forum, which focused on the role of litter abatement on restoring our nation's communities. Mr. Stein's firm provides pro-bono time to organizations such as Ocean Conservancy, assisting with projects regarding litter and marine debris.

Mr. Stein has worked on a considerable number of litter–related projects including the Litter: Literature Review, for which he was lead author in 2007. He led the design and implementation of Keep America Beautiful's National Litter Survey and Cost Study (2009) and the development of their Community Appearance Index, which focused on the impact of illegal signage, excessive outside storage, abandoned/junk vehicles and graffiti on local communities.

Mr. Stein has taught Environmental Science and Ethics in Management at the university level and was invited, as a subject matter expert on environmental issues and community dynamics, to participate in a study commissioned by the President in 2010.

Education

B.Sc., cum laude – Environmental Studies, Syracuse University and SUNY College of Environmental Science and Forestry (Joint Program). Focus of Studies: Waste Management and Environmental Law. Teaching assistant for Dr. Allen Lewis's Introduction to Environmental Studies course. Internship with New York State Department of Environmental Conservation.

M.Sc. – Natural Resource Policy and Management, Syracuse University and SUNY College of Environmental Science and Forestry (Joint Program). Focus of Studies: Macroeconomic relationship of Asian/U.S. recycling industries and evaluation of sustainable policy initiatives. Awarded New York SWANA Annual Scholarship Award for his research examining the implications of public policy intervention on the establishment of sustainable domestic recycling markets.

Ph.D. Coursework – Mr. Stein began a Ph.D. program in Environmental Science at SU/SUNY–ESF focusing on the influence of cultural archetypes on littering behavior and litter abatement, authoring a literature review of behavioral and litter quantification/characterization studies conducted between 1968 and 2006 and a paper evaluating the influence of cultural archetypes in America.

Selected Projects

- Technical Assessment Report: Analysis of California Statewide Water Quality Control Plans to Control Trash (June 2014 Trash Amendments) - Author (2014)
- 2014 Rhode Island Litter Survey – Project Manager, Author of subsequent report (2014)
- Maryland State Legislature – Testimony to the State Senate and House on the components of litter (2014)
- Paper, Plastic or Neither – Time magazine (2014)
- San Francisco Water Board – Measuring Compliance and Trash Load Reductions (2013)
- 2013 Texas Litter Survey – Project Manager, Author of subsequent report (2013)
- World Ocean Council – Research on food waste, carpet and mattress recovery (2012)
- 2012 Toronto Streets Litter Audit – Project Manager, Author of subsequent report (2012)
- Contribution of Polystyrene Foam Food Service Products to Litter – Author (2012)
- Our Beaches and Seas: Mechanics of Risk – Author, Speaker (2012)
- Multi–City Paper and Plastic Bag Litter Survey – Project Manager, Author of subsequent report (2012)
- World Ocean Council – Research on differentiation of Material Flows Methodology (2012)
- Technical Assessment Report: Analysis of BASMAA MS4s Stormwater Trash Reports - Author (2012)
- Sustainable Consumption Expert Roundtable, Johnson Foundation (2012)
- Ocean Conservancy: Beach Litter Survey Methodology Enhancements (2011)
- FoLAR: Los Angeles County Trash Biography – Peer Review (2011)
- National Litter Forum: Restoring Our Communities – Organizer and Sponsor (2011)
- Confidential Client – Expert witness research and report regarding litter and marine debris (2010)
- President's National Infrastructure Advisory Council: Optimization of [Community] Resources – Contributor (2010)
- 2010 Northeast Litter Survey – Three statewide litter surveys (Maine, New Hampshire, Vermont) – Project Manager, Author of subsequent report (2011)

- KAB National Affiliates Webinar: Litter – The Next Steps (2010)
- Bottled Water Study –Municipal Water Systems and Growth of the Bottled Water Industry (2010)
- Syngress/Elsevier Publishing – Honorariums (three) for Reviews to Publisher of Digital Forensics and Security Book Proposals (2010)
- Forensics Levels I,II and III – Towson University (2009-2010)
- KAB National Litter Survey/ Litter Cost Study – Project Manager, Lead Report Author (2009)
- BBC Advisor for planned series dealing with greenhouse gas emissions from landfills and other sources (2009)
- KAB Community Appearance Index Development – Project Manager (2007-2008)
- KAB National Litter Survey and Cost Study – Project Manager, Lead Author of subsequent report (2008–2009)
- KAB National Conference: 2009 National Litter Survey Results – Speaker (2009)
- KAB Campaign Partners Conference: National Litter Survey Results – Speaker (2009)
- National Geographic Magazine, Trash Register [Litter on Maryland Highways] (December 2008)
- The Impacts of Litter on Greenhouse Gas Emissions – Speaker, WASTECON (2008)
- Addressing Litter in a Changing World – Speaker, International Adopt–a–Highway Conference (2008)
- KAB: International Litter Research Forum, Invited Participant (2007)
- Litter: Literature Review –Lead Author (2007)
- Litter and Its Implications for Solid Waste Managers, WASTECON – Speaker (2007)
- Roadside Litter: Hazards on the Road, MSW Management Magazine – Co–Author (2007)
- Garbage, Litter & Trash, Kojo Nnamdi Show, WAMU – Interview (2007)
- State of Tennessee – Project Manager for statewide litter survey, Author of subsequent report (2007)
- The Truth about Recycling, The Economist – Contributor (2007)
- The New Gold Rush: Mining the Plastics Markets, Resource Recycling Magazine – Author (2007)
- State of Georgia – Project Manager for statewide litter survey, Author of subsequent report (2007)
- State of Georgia – Subject Matter Expert for litter–related web tool design team (2007)
- Debris Wreaks Havoc on the Road, ABC's Good Morning America – Interview (2007)
- Debris Wreaks Havoc on the Road, www.abcnews.com – Website Article (2007)
- Worsening U.S. Road Litter Threatens Lives, Voice of America – Interview (2007)
- Road Debris Causes 25,000 Accidents Annually, Urban Transportation Monitor – Interview (2007)
- Wake Up and Smell the Trash, Potomac Watershed Trash Summit Roundtable (2007)
- Highway Debris, Long an Eyesore, Grows as Hazard, New York Times – Interview (2007)
- US–Government Accountability Office – Assisted with GAO-07-37 report "Recycling: Additional Efforts Could Increase Municipal Recycling" (2007)

- Developed RFP for Tempe, AZ covering MSW and sludge disposal and recyclables processing (2007)
- New York State Dept. of Economic Development – Analysis of New York Scrap Tire Markets Update Reports (2006–07)
- Seattle Public Utility – White Paper: Mobilizing Resources for Disaster Response (2006)
- Potomac Watershed Initiative Trash Monitoring Protocol Subcommittee – Advisor, Led design of Potomac River trash survey (2006–2007)
- Ocean Conservancy's National Marine Debris Monitoring Program – Survey Director for Chincoteague Island, VA Site (2006–2007)
- American Plastics Council – Evaluated the impact of materials bans on environmental quality in California (2006–07)
- American Plastics Council – Evaluated the impact of "All-Plastic Bottles" and "Rural Recycling" initiatives on plastic recovery rates (2006)
- Confidential Client – Litter life-cycle research (2005–06)
- California Litter Survey of 77 Beaches – Project Manager (2005)
- Sweating the Litter Things: Recent Litter Survey Results, KAB National Conference – Speaker (2005)
- Sweating the Litter Things, Resource Recycling Magazine – Author (2005)
- What Litter Surveys Reveal about Bottle Bills, Federation of New York Solid Waste Associations Conference – Speaker (2005)
- Single–Stream (Compilation contributor), Resource Recycling Magazine (2005)
- Booz Allen – Lead Author for white paper on improving recycling measurements (2005)
- Alexandria, VA – Solid Waste Management Plan – Author (2005)
- Confidential Client – Expert Witness project – Comprehensive recycling facility audit (2005)
- Arlington, VA – Developed waste generation projections to support of flow–control issues (2005)
- Coca–Cola – Led the design team for development of a recycling program web tool (2004)
- Single-Stream: A Recycling Method That Cuts Both Ways, Resource Recycling Magazine (2004)
- Single-Stream: Shards and the Damage Done – Unanticipated Consequences of Single-Stream Recycling, NRRA Recycling Conference (2004)
- Single-Stream: Glass vs. Paper, New York Federation of Solid Waste Associations (2004)
- Who's Messing with New Jersey: Litter Survey Results, New Jersey Clean Communities Council (2004)
- What Litter Surveys Reveal About Bottle Bills, New Jersey Clean Communities Council (2004)
- New Jersey Litter Study – Project Manager, Author of subsequent report (2004)
- Recycled Paper Mill – Measured the impacts of contamination from incoming single-stream recyclables to the mill's landfill and maintenance costs (2004)
- Single-Stream Recycling: Capture & Residue, Maryland Department of the Environment (2003)

- Does Single-Stream Recycling Make Sense, NRRA Recycling Conference and Exposition (2003)
- Glass and Single-Stream Recycling, New York Federation of Solid Waste Organizations (2003)
- Pontiac, MI – Led development of collection RFP and on evaluation committee (2003)
- Presenting Recycling Economics to Public Officials and the Media, Maryland Recyclers Coalition Annual Conference (2003)
- Alexandria–Arlington Waste Disposal Trust Fund – Wrote Memo on Pending Federal Legislation and the Oneida–Herkimer Solid Waste Authority Flow Control Case – Author (2002)
- Recycling collection, processing and transport services RFPs – City of Fort Worth (2002)
- Issues Facing Paper Recycling, New York Federation of Solid Waste Organizations (2002)
- Fort Worth, TX – Developed recycling RFP and multi–year recycling revenue projection model (2002)
- GBB (Fairfax, VA) – Administrator of Windows Small Business Server and Microsoft Exchange Email Server (2001-2005)
- North Carolina Litter Study – Co-Author (2001)
- Metro–Nashville Government – Developed multi–year recycling revenue projection model (2001)
- Metro–Nashville Government –Transfer and disposal RFP and proposal evaluation (2001)
- Arlington County, VA Wastewater Treatment Plant – Analysis of Biosolids Management Practices and Alternatives Evaluations (2001)
- AF&PA (Washington, D.C.) – Developed and Published Flash Fax Summary Reports for 12 Leading Economic Indicators (2000-01)
- AF&PA – Worked with Dept. of Commerce to improve procedures for reporting Wood Industry Data (2001)
- Mass. State Legislature – Testified on the impact of container deposits on municipal recycling program revenues (2000)
- Creating a Successful Recycling Program, U.S. Conference of Mayors (2000)
- Municipal Curbside Recycling: Analyzing the Obstacles to Sustainability – Master's Thesis (1999)
- Municipal Recovery: A Success Story, International Recovered Paper IX (1998)
- Residential Mixed Paper Usage, New York State Federation Conference – Organizer (1998)
- Onondaga County, NY – Oversight for 30 recyclables and trash haulers and three MRFs (1990-1999)
- Onondaga County, NY – Site manager for Household Hazardous Waste Days (1992-1999)
- The Thinwalling Phenomena – Impact of Thinner Containers on Municipal Recycling Revenues, New York State Recycling Conference (1997)

- Curbing the Bottle Bill – Impact of Bottle Bills on Municipal Recycling Revenues, Bottle Bill: Sense or Cents Conference (1997)
- Onondaga County – Developed MRF Contingency Plan (1996)
- Auditing MRF Recyclables, New York State Recycling Conference (1996)
- Curbside Counting Lessons – Curbside Recyclables Characterization, New York SWANA (1996)
- Onondaga County, NY – Developed and implemented a stratified curbside recycling quantification and characterization study countywide (1996)
- Social Costs of Recycling – Indirect costs and benefits of curbside recycling, New York State Recycling Conference (1996)
- WiNet Waste and Recycling Information Software Workshop, New York State Dept. of Environmental Conservation Conference (1995)
- Onondaga County, NY – Designed and implemented "WiNet", an online recycling and solid waste information system (1995)
- Onondaga County, NY – Industrial and Medical Waste Audit. Project manager for three survey teams, documenting and analyzing the generation, handling and recovery of various components of all industrial process and medical waste facilities in Onondaga County, NY (1991-1992)
- Onondaga County, NY – Administrator and tech support for all agency workstations and network (1990-1999)
- CNY Environment – Research and analysis of drinking water quality in upstate New York comparing contamination issues from tap, well and filtered water sources (1989)
- New York State Dept. of Environmental Conservation – Organize and research FOIA data and requests as intern (1989)
- US–EPA Small Business Innovation Research Solicitation – Recovery and Reprocessing of Solid Municipal Wastes (1987)
- Plastic Recycling – Created one of the South's first all-plastic container recycling programs, accepting and grinding consumer and commercial plastic containers for recycling (1986)
- Developed program to sort out and recover recyclable materials from trash collected on "Trash–Bash Day" (1987)
- AT&T – Consultant to help increase recycling at AT&T's manufacturing plants (1987)
- Bossier City Clean Community Council – Developed newspaper recovery program in area 7-11 stores to benefit local Keep America Beautiful affiliate (1986)
- U.S. Air Force – Developed prototype drop–off recycling program to benefit the Air Force's Welfare and Morale Fund (1986)
- Assisted SWEPCO (Southwestern Electric Power Co.) with fund–raising recycling program to benefit St. Jude's Hospital (1986)
- Created markets for polycoated diaper liner trims from Kimberly–Clark plant (1986)
- Caddo Waste Trading – Primary broker and supplier of a variety of recycled paper grades to dry–felt roofing mill (1984-88)
- Managed Recycling Facility Operations that handled all grades of fiber as well as glass, aluminum and plastics for 7 years (1972-73, 1976-1979, 1984-88)

- American Bank –Design and implementation for one of the first U.S. online banking software systems (1984)
- American Bank – Computer programmer and Data Processing Manager (1982-84)
- American Bank – Author, Data Processing Security and Procedures Manual (1983)

For further information, contact:

Steven R. Stein, Principal
Environmental Resources Planning, LLC
624 Main Street, Suite B
Gaithersburg, MD 20878

Office: (240) 631-6532

Email: sstein@erplanning.com

CITY OF PINOLE

CITY HALL

2131 Pear Street
Pinole,CA 94564

Phone: (510) 724-9000
FAX: (510) 724-9826

July 8, 2015

Bruce Wolfe, Executive Officer
California Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay St. Oakland, CA 94612

Via email to: mrn.reissuance@waterboards.ca.gov

Subject: Opposition to the Tentative Qrder Reissuing the Municipal Regional Stormwater Permit (MRP 2.0)

Dear Mr. Wolfe and Members of the Board:

The City of Pinole is a community committed to improving water quality, however, it is a community with limited funds. We therefore believe that all elements of the new Municipal Regional Stormwater Permit must be effective in improving water quality and provide a clear path to compliance. The current Tentative Order includes unrealistic timeframes, unclear compliance language and methodology, and burdensome reporting that provides minimal water quality benefits. Therefore, the City of Pinole opposes MRP 2.0 as it is currently drafted, asks that your Board cqnsider the following comments, and direct Water Board staff to work with permittees to revise the Tentative Order.

C.3. – Pinole – #1 – STL

The draft Tentative Order includes a new mandate to develop Green Infrastructure Plans. This coordinated, multi-year effort requires comprehensive long range plans that will consume significant financial resources. For permittees to achieve this we ask that the following critical changes are included:

- The draft Tentative Order requires all permittees to assess each planned infrastructure project and add Green Infrastructure features where feasible. *We ask that permit language is clarified to allow permittees to analyze and consider factors such as: grading and drainage, pollutant loading associated with adjacent land use, use of available space within the project area, condition of existing infrastructure and potential funding to support LID elements.*

C.3. – Pinole – #2 – STL

- The draft Tentative Order requires staff to develop and have council approve a new Green Infrastructure Framework within one year of the permits' effective date. *This is a very short timeframe to coordinate and educate upper level staff and elected officials, prepare the frameworks, conduct resource planning and accommodate lead times for bringing the framework to governing bodies. We ask that this timeframe is extended by 9 months.*

C.12. – Pinole – #3 – STL

Considerable time and effort has been spent discussing how to reduce levels of pollutants of concern flowing into our waterways, particularly PCBs. Failure to achieve the reductions specified in MRP 2.0 could result in our City being held in noncompliance. However, as drafted, MRP 2.0 provides no clear path for permittees to avoid noncompliance. Some examples include:

C.12. – Pinole – #4 – STL

- The draft Tentative Order mandates achieving specified reductions in the total quantity of PCBs discharged from municipal storm drains. A major means of achieving these reductions is through removal of PCBs during building demolitions. However this fails to acknowledge that permittees have no control over timing of when properties redevelop. *We ask that development of* a *program to control PCBs during building demolitions, rather than applying controls to* a *specified number of buildings demolished, should represent compliance with this requirement.*

C.12. – Pinole – #5 – STL

- The Tentative Order includes (in the Fact Sheet) an incomplete method to achieve stipulated reduction credits for each building demolished with PCB controls, for each redeveloped site with new bioretention facilities, and for finding and abating concentrated sources of PCBs. Permittees can't guarantee that they will find PCBs and be able to abate them. *We ask that development of* a *program to systematically identify and review potential sources, and refer them to appropriate agencies for abatement, be the basis for credit toward compliance.*

C.12. – Pinole – #6 – STL

- The draft Tentative Order allows only four (4) months after Permit adoption for permittees to submit a more complete "measurement and estimation methodology and rationale" for stipulating PCB reduction credits. *We ask that BASMAA's PCBs program accounting methodology be finalized, incorporated into the permit, and then used*

to calculate PCBs load reductions during permittee annual reporting.

The major new mandates in the Tentative Order will require a significant, sustained effort to implement, absent any new or additional funding source. The attached table summarizes adjustments that have been presented to Water Board staff that would improve program efficiencies or eliminate certain less beneficial tasks. We look forward to resolution of the remaining issues and to implementing MRP 2.0.

Sincerer y,

Peter Murray
Mayor

Attachment:
Requested Adjustments to Improve Efficiency in the Municipal Regional Permit, Including Elimination of "Less Beneficial Tasks".

Requested Adjustments to Improve Efficiency in the Municipal Regional Permit, Including Elimination of "less Beneficial Tasks"

	Provision	Task or Requirement	Requested Adjustments
C.2.f. – Pinole – #8 – STL	C.2.f.	Corporation Yard inspection requirements.	Eliminate this requirement, as it duplicates the requirements for inspections already included in the Stormwater Pollution Prevention Plans (SWPPPs) for these same facilities.

C.3.b.i. – Pinole – #9 – STL	C.3.b.i.	Eliminates grandfathering of Regulated Projects with vested tentative maps approved prior to advent of C.3 requirements	Allow municipalities flexibility to require these applicants to implement stormwater treatment requirements only to the extent not in conflict with state law and isting development agreements
C.3.b.ii.(4). – Pinole – #10 – STL	C.3.b.ii.(4)	Certain Roads Projects are Regulated Projects under Provision C.3	Delete this requirement as the intent is superseded by the Green Infrastructure requirements in Provision C.3.j.
C.3.b.ii.(1)(c) – Pinole – #11 – STL	C.3.b.ii(1)(c)	Requires projects where 50% or more of existing impervious area is redeveloped to provide treatment for entire area.	D lete this requirement as the intent is superseded by the Green Infrastructure requirements in Provision C.3.j.
C.3.e.ii. – Pinole – #12 – STL	C.3.e.ii.	Special Projects-allowance to use non-LID treatment on smart growth development projects that meet specified location and gr ss density criteria.	To avoid a disincentive for including pedestrian amenities, allow public plazas to be omitted from calculation of project gross density.
C.3.e.v.(1) – Pinole – #13 – STL	C.3.e.v.(1)	Requires Permittees to track Special Projects that have been identified (application submitted) but not approved.	Delete this requirement, as the number of projects, and amount of impervious area, has proven to be small.
C.3.e.v.(2) – Pinole – #14 – STL	C.3.e.v.(2)	Requires Permittees to conduct and document an analysis of the feasibility of LID treatment for Special Projects.	Delete this requirement, as it creates considerable additional effort for applicants and Permittees without any expected water-quality benefit.
C.3.g.vii. – Pinole – #15 – STL	C.3.g.vii.	Requires Contra Costa municipalities (through CCCWP) to submit a technical report describing how Contra Costa will implement current Permit hydromodif cation management requirements.	Delete requirement to submit a technical report. CCCWP submitted a 2013 report on the results of a multi-year monitoring study that conduded current policies and criteria meet these
C.3.g.iv. – Pinole – #16 – STL	C.3.g.iv.	Allows Permittees to propose a different method for sizing hydromodification management facilities that is not biased against Low Impact Development, but requires a Permit amendment before using the method.	Delete requirement for a Permit amendment before the method is used. Note: the Fact Sheet accompanying the Tentative Order states that Water Board Executive Officer approval would be required, not a Permit amendment.
C.3.h.ii.(6)(b)-(c) – Pinole – #17 – STL	C.3.h.ii.(6)(b)-(c)	Requires Permittees to inspect 20% of Regulated Projects annually, as well as every project at least once every 5 years.	Delete the annual requirement to allow flexibility in scheduling inspections.

Provision	Task or Requirement	Requested Adjustments
C.3.j.i.(1) – Pinole – #18 – STL		
C.3.j.i.(1)	Requires each Permittee to prepare and implement a Green Infrastructure Plan (framework for Plan due in 12 months; Plan due in 2019)	Extend the time for submittal of the required framework to a minimum of 20 months.
C.4, C5., & C.6. – Pinole – #19 – STL		
C.4, C.5, C.6	For inspections of businesses and construction and for response to illicit discharges, requires that corrective actions of "actual or potential non-storrnwater discharges be implemented before the next rain event, but no longer than 10 business days after potential or actual non-storrnwater discharges are discovered.	Delete references that specify types of corrective actions and sites, t meframes for implementation, as these create a disincentive for identifying minor problems and create unproductive administrative work.
C.5.e.iii. – Pinole – #20 – STL		
C.5.e.iii.	Requires Permittees to report a list of mobile cleaners operating in their jurisdiction.	Delete, as this information is unavailable.
C.5.e.iii. – Pinole – #21 – STL		
C.5.e.iii.	Requires Permittees to report a list and summary of specific outreach events and education conducted to the different types of mobile businesses	Delete and clarify that requirements to inspect mobile businesses and abate discharges is covered by existing requirements elsewhere in Provisions C.4 and C.5.
C.7.a. – Pinole – #22 – STL		
C.7.a.	Permittees are required to mark and maintain Mno dumping" markings on storm drain inlets.	Move this task to Provision C.2.
C.7.b. – Pinole – #23 – STL		
C.7.b.	Requires Permittees to participate in or contribute to "advertising" campaigns on specified subjects and assess results.	Change "advertising" to "outreach" to make explicit that a variety of methods, including social media, may be used. Delete references to specific subjects. Allow more flexibility.

C.9.c. – Pinole – #24 – STL

C.9.c.	Requires Permittees to observe pesticide applications by their contractors.	Delete requirement.

C.10.a.i.a. – Pinole – #25 – STL

C.10.a.i.a.	Requires Permittees to achieve a 70% load reduction by July 1, 2017	Extend this compliance date to 2018.

C.10.a.ii.b. – Pinole – #26 – STL

C.10.a.ii.b.	Requires Permittees to ensure private properties plumbed directly to municipal storm drains are equipped with full trash capture devices or to verify •tow trash generation rate. Requires Permittees to investigate and map these properties.	Delete the mapping requirement and integrate inspections and enforcement into Provision C.4 (Commercial and Industrial Inspections).

C.10.b.1.a. – Pinole – #27 – STL

C.10.b.1.a.	Specifies maintenance frequencies for full trash capture devices based on trash generation rates.	Set minimum frequency of 1x/year for all devices, to be adjusted based on maintenance experience. Required maintenance frequency

City of Pittsburg

65 Civic Avenue
Pittsburg, CA 94565-3814

July 7, 2015

Bruce Wolfe, Executive Officer
California Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay Street
Oakland, CA 94612

Re: Opposition to Tentative Order Reissuing the Municipal Regional Permit (MRP 2.0)

Dear Mr. Wolfe and Members of the Board:

The City of Pittsburg appreciates the opportunity to provide the Regional Water Quality Control Board with comments regarding the proposed tentative order. The City is committed to improving water quality, and requests that the Water Board and staff work with permittees to develop an implementable, cost effective permit. The City of Pittsburg would like to address some key issues regarding the draft Tentative Order:

C.2.d. – Pittsburg – #1 – STL

- Provision C.2.d. Stormwater Pump Stations- monitoring the levels of dissolved oxygen in the discharge to ensure concentrations are above 3mg/L

Over the course of the last 5 years the City has been monitoring the discharges of one pump station that discharges stormwater flows into an eutrophic body of water that eventually discharges into the Delta. Dissolved oxygen levels prior to and after discharge have been monitored and have consistently found that the dissolved oxygen of the receiveing waters consistently below the 3 mg/L threshold. Discharge from the City's pump does not contribute to the low dissolved oxygen level that already exists in this marsh area. Therefore, monitoring of the pump station for this provision proves pointless. The City of Pittsburg therefore requests to be exempt from continuing to monitor for dissolved oxygen. Maintenance of this open channel prior to the pump is already included in the City's creek maintenance program and is covered with a Fish and Wildlife permit for regular maintenance.

C.3.j.i.a-c. – Pittsburg – #2 – STL

- Provision C.3.j Green Infrastructure Planning and Implementation

C.3.j.i.a.-c.: The provision as written is unclear as to what delierables are expected within the first two years, a "framework" for a Green Infrastructure program or a completed "plan". In addition the requirement to create a prioritization map for

potential projects based upon drainage areas will require valuable resources for an effort which has little to no benefit for water quality. More clarification is needed regarding the expected deliverables, and more flexibility should be given for mechanisms by which permittees track progress toward these goals. The referenced "targeted" dates for retrofit of impervious surfaces should instead be revised to "projections", as the proposed timeframes are unreasonable. Given the amount of effort required to produce this deliverable, additional time is requested for the first submittal.

C.3.j.iv. – Pittsburg – #3 – STL

C.3.j.iv.: It is ambitious to expect that permittees could develop a Capital Improvement program to meet the prescribed PCB and mercury reductions as outlined in Provisions C.11 and C.12, while also incorporating C.3 into these projects. The Fact Sheet regarding reduction of PCBs acknowledges uncertainties regarding the effectivenes and benefits of control measures due to limited data and experience with these control measures. Additionally, there is no guidance provided to account for PCB and mercury load reductions with constructed green infrastructure projects. Before permitees expend valuable time and resources towards this goal, the expectations and means to validate compliance must be clear. Further development of acceptable design standards that meet the intent of pollutant removal through green infratructure projects is necessary for permittees to develop constructable projects.

C.4. – Pittsburg – #4 – STL

- Provision C.4 Enforcement Response Plan

Modifications to C.4 that now require all potential and actual discharges be given a high priority would reduce the timeline for corrective action to 10 days from 30, exposing the City to potential non-compliance. The City's inspection program will already be impacted with the additional facilities required to be inspected under the new Industrial Discharge permit, and with the same limited resources to accomplish these inspections. The City requests that the current provision allowing up to 30 days for corrective action remain unchanged, and that permittees be allowed flexibility to take other actions as may be more effective at achieving corrective actions from dischargers.

C.10.a.i. – Pittsburg – #5 – STL

- Provision C.10.a.i. Trash Reduction Requirements

The proposed schedule to attain the 70% trash load reduction by July 1, 2017 does not provide sufficient time for permittees to comply. Consideration must be given to the time lost in the first permit term for implementing trash load reduction actions. As you know, with the onset of MRP 1.0, permittees worked to develop short-term trash load reduction plans, which were rejected by the Water Board. Then permittees worked to develop an alternative methodology, obtain Water Board staff buy-in, and implement the strategy. Submittals to the Water Board for the 40% reduction proved that more clarity was needed from Water Board staff regarding acceptable efforts towards reduction credits. A further complication was a mid-permit term reduction in credits that permittees expected to receive. Therefore in light of these reasons, the City urges an extension to the 70% trash load reduction attainment schedule by one year, to July 1, 2018.

C.10.a.ii.b. – Pittsburg – #6 – STL

- Provision C.10.a, ii.b. Trash Generation Area Management

The requirement to create a map of private lands that are greater than 5,000 sq.ft. and are plumbed to the City's storm drain system would require substantial effort for no benefit. The City contends that a more relevant action would be enhanced visual assessments for these areas instead.

C.10.a.iii. – Pittsburg – #7 – STL

- Provision C.10.a.iii. Minimum Full Trash Capture Systems

The inherent design standards for C.3 facilities exceed the capacity required for the "one-year, one-hour" design storm standard. The addition of mesh screens to the overflow pipe is unnecessary since the soil matrix of these facilities retain more debris than a 5mm mesh screen.

C.10.e.i. – Pittsburg – #8 – STL

- Provision C.10.e.i. Optional Trash Load Reduction Offset Opportunities Additional Creek and Shoreline Cleanup

The proposed 5% offset ratio for these actions is too small. The recently adopted resolution by the Water Board, Adverse Water Quality Impacts of Homeless Encampments emphasizes the expectation that permittees must put forth more effort regarding the abatement of homeless encampments on publicly and privately maintained properties or be subject to enforcement action by the Water Board. The City already puts forth significant efforts to help these individuals get services, but inevitably many return to camp at these creek sites. Permittees should not be penalized for its inability to prevent homeless encampments from re-establishing themselves in the creeks. The City requests the Water Board acknowledge the amount of effort and resources required to abate the debris attributed to homelessness, and allow a larger offset ratio of 10% for this effort.

C.12.a. – Pittsburg – #9 – STL

- Provision C.12a. Implement Control Measures to Achieve PCBs Load Reductions

Further guidance needs to be developed for this Provision to be implementable. It is expected that permittees meet specific interim, county-specific reductions in accordance with the schedule provided in Table 12.1. Reductions are expected through a combination of implemented retrofit projects as required by Green Infrastructure Program (which will also be in development during this timeframe), as well as the strategic demolition of private and public historic buildings that may have been constructed with PCB-containing materials. Accounting and procedures to validate PCB reductions through these mitigation measures have not yet been developed. Permittees have no control over the rate of demolition, and further guidance is necessary for effective implementation of the Green Infrastructure. The City respectfully proposes elimination of the numerical interim load reduction

schedule, in favor of the ultimate and more relevant goal of total reduction by the end of the permit term. This change will measure interim compliance by levels of effort expended rather than a numerical limit.

I appreciate the opportunity to share the City's comments and concerns. If you have any questions regarding these comments, please contact me or the City's NPDES permit coordinator Jolan Longway at (925) 252-4803 or jlongway@ci.pittsburg.ca.us.

Sincerely,

Joe Sbranti
City Manager

City of Pleasant Hill

July 7, 2015

Bruce Wolfe, Executive Officer
California Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay Street
Oakland, CA 94612

Via email to: mrp.reissuance@waterboards.ca.gov

Subject: Opposition to the Tentative Order Reissuing the Municipal Regional Stormwater Permit (MRP 2.0)

Dear Mr. Wolfe and Members of the Board:

Thank you for the opportunity to comment on the Tentative Order Reissuing the Municipal Regional Stormwater Permit (MRP 2.0.) For the past two years, representatives from Contra Costa municipalities, along with a consortium of Bay Area agencies and BASMAA, have been engaged in an ongoing dialogue with your staff to ensure that the requirements contained in MRP 2.0 provide for a clear path to compliance.

General – Pleasant Hill – #1 – STL

This process generated many new ideas and approaches that build upon experience gained and identify how to expand upon and enhance our stormwater pollution prevention efforts. It also advocated consolidating or eliminating "less beneficial tasks" in the permit, extending implementation dates, reducing reporting, and adjusting ongoing tasks to reduce effort while maintaining effectiveness in protecting water quality.

This approach acknowledges the reality that new or additional funding sources required to implement the new and expanded requirements contained in MRP 2.0 have yet to be identified. It advocates allocating limited resources in ways that would focus upon, and maximize, the effectiveness of major new and expanded mandates.

Despite the extensive effort, few of these ideas were carried forward into MRP 2.0. Therefore, I am writing in opposition to MRP 2.0 as it is currently drafted. I ask that your Board consider the following comments.

General – Pleasant Hill – #2 – STL

New substantial and expanded mandates should be offset by eliminating less beneficial tasks. This approach provides permittees the flexibility to utilize existing, limited, funds in an efficient manner. In order to achieve this, I am requesting that the Board consider the following list of specific revisions, which directly affect the City of Pleasant Hill:

C.3.b.i. – Pleasant Hill – #3 – STL

- Provision C.3.b.i. Eliminates grandfathering of Regulated Projects with vested tentative maps approved prior to the advent of Provision C.3

This should be revised to allow flexibility to require developers implement these requirements only to the extent not in conflict with state law and existing development agreements.

C.3.b.ii.(4). – Pleasant Hill – #4 – STL

- Provision C.3.b.ii.(4) Requires certain public road projects to include stormwater treatment facilities.

  This should be deleted, since the intent of this requirement (to reduce pollution originating from roadways) is better achieved through the new Provision C.3.j, which requires the city to develop and implement a Green Infrastructure plan.

C.10.a.i.a. – Pleasant Hill – #5 – STL

- Provision C.10.a.i.a. Requires the City to achieve a 70% load reduction by July 1, 2017.

  This provision should be revised to allow the City more time to achieve the higher trash reduction milestones.

C.10.a.ii.b. – Pleasant Hill – #6 – STL

- Provision C.lO.a.ii.b. Requires the City to ensure private properties directly connected to public drainage facilities be equipped with full trash capture devices or verify they have a "low" trash generation rate, and requires the City to investigate and map storm drain facilities on these properties.

  This requirement should be deleted, as inspections and enforcement of private properties are already part of Provision C.4 (Commercial and Industrial Inspections). Mapping private storm drains and implementing an enforcement program to install full trash capture devices is a significant undertaking for the City, with little benefit beyond what is already achieved through Provision C.4.

C.10.b.1.a. – Pleasant Hill – #7 – STL

- Provision C.lO.b.l.a. Specifies maintenance frequencies for full trash capture devices based on trash generation rates, and sets a minimum frequency of once a year for all devices.

  This should be revised to require maintenance be done at a frequency specified by the trash capture manufacturer, and adjustments be allowed based on real maintenance needs and experience.

C.10.b.iv. – Pleasant Hill – #8 – STL

- Provision C.lO.b.iv. Only allows a credit of up to 5% toward trash reduction requirement for source control actions such as product bans (e.g. plastic bag bans).

  The credit should be increased to a maximum of 20% to fully recognize existing product bans and to create new incentives for future source control actions.

C.10.f.ii. – Pleasant Hill – #9 – STL

- Provision C.lO.f.ii. Requires Permittees to produce an updated trash generation map each year.

  This is a burdensome requirement for many cities (like Pleasant Hill) who do not have GIS resources. Map updates should only be required when compliance milestone updates are due (i.e. at 70% and 100%).

C.12. – Pleasant Hill – #10 – STL

I am also concerned that complying with some of the PCB reduction requirements under MRP 2.0 are simply out of the City's control. Failure to achieve these reductions in PCBs could result in the City of Pleasant Hill being held in noncompliance, when the requirement for compliance is not clear. For example, the draft Tentative Order requires Permittees to achieve specific reductions in the total quantity of PCBs discharged to City storm drains. For the most part, this is accomplished by reductions through removal of PCBs, commonly found in insulating fluids (for transformers and capacitors), and caulking and sealants which are more prevalent in old industrial zones and abated during building demolition. In reality, Permittees have no control over when private property owners demolish these buildings.

There are other items that impact cities and counties adversely that I am requesting the Board review (see attachment).

Please consider these comments, and those by the CWP, and direct your staff to work with Permittees to revise the Tentative Order appropriately. Thank you.

Sincerely,

Kenneth Carlson
Mayor
City of Pleasant Hill

KC:jmd

cc: City Council
June Catalano, City Manager
Mario Moreno, City Engineer

Attachment:
Requested Changes to the May 11, 2015 Tentative Order

Requested Adjustments to Improve Efficiency in the Municipal Regional Permit, Including Elimination of "Less Beneficial Tasks"

	Provision	Task or Requirement	Requested Adjustments
C.2.f. – Pleasant Hill – #11 – STL	C.2.f.	Corporation Yard inspection requirements.	Eliminate this requirement, as it duplicates the requirements for inspections already included in the Stormwater Pollution Prevention Plans (SWPPPs) for these same facilities.
C.3.b.i. – Pleasant Hill – #12 – STL	C.3.b.i.	Eliminates grandfathering of Regulated Projects with vested tentative maps approved prior to advent of C.3 requirements	Allow municipalities flexibility to require these applicants to implement stormwater treatment requirements only to the extent not in conflict with state law and existing development
C.3.b.ii.(4) – Pleasant Hill – #13 – STL	C.3.b.ii.(4)	Certain Roads Projects are Regulated Projects under Provision C.3	Delete this requirement as the intent is superseded by the Green Infrastructure requirements in Provision C.3.j.
C.3.b.ii.(1)(c) – Pleasant Hill – #14 – STL	C.3.b.ii.(1)(c)	Requires projects where 50% or more of existing impervious area is redeveloped to provide treatment for entire area.	Delete this requirement as the intent is superseded by the Green Infrastructure requirements in Provision C.3.j.
C.3.b.ii. – Pleasant Hill – #15 – STL	C.3.e.ii.	Special Projects-allowance to use non-LID treatment on smart growth development projects that meet specified location and gross density criteria.	To avoid a disincentive for including pedestrian amenities, allow public plazas to be omitted from calculation of project gross density.
C.3.e.v.(1) – Pleasant Hill – #16 – STL	C.3.e.v.(1)	Requires Permittees to track Special Projects that have been identified (application submitted) but not approved.	Delete this requirement, as the number of projects, and amount of impervious area, has proven to be small.
C.3.e.v.(2) – Pleasant Hill – #17 – STL	C.3.e.v.(2)	Requires Permittees to conduct and document an analysis of the feasibility of LID treatment for Special Projects.	Delete this requirement, as it creates considerable additional effort for applicants and Permittees without any expected water-quality benefit.
C.3.g.vii. – Pleasant Hill – #18 – STL	C.3.g.vii.	Requires Contra Costa municipalities (through CCCWP) to submit a technical report describing how Contra Costa will implement current Permit hydromodification management requirements.	Delete requirement to submit a technical report. CCCWP submitted a 2013 report on the results of a multi-year monitoring study that concluded current policies and criteria meet these requirements
C.3.g.iv. – Pleasant Hill – #19 – STL	C.3.g.iv.	Allows Permittees to propose a different method for sizing hydromodification management facilities that is not biased against Low Impact Development, but requires a Permit amendment before using the method.	Delete requirement for a Permit amendment before the method is used. Note: the Fact Sheet accompanying the Tentative Order states that Water Board Executive Officer approval would be required, not a Permit amendment.

C.3.h.ii.(6)(b)(c) – Pleasant Hill – #20 – STL	C.3.h.ii.(6)(b) and (c)	Requires Permittees to inspect 20% of Regulated Projects annually, as well as every project at least once every 5 years.	Delete the annual requirement to allow flexibility in scheduling inspections.

	Provision	Task or Requirement	Requested Adjustments
C.3.j.i.(1) – Pleasant Hill – #21 – STL	C.3.j.i.(1)	Requires each Permittee to prepare and implement a Green Infrastructure Plan (framework for Plan due in 12 months; Plan due in 2019)	Extend the time for submittal of the required framework of 20 months.
C.4, C.5, & C.6 – Pleasant Hill – #22 – STL	C.4, C.5, C.6	For inspections of businesses and construction sites, and for response to illicit discharges, requires that corrective actions of "actual or potential non-stormwater discharges" be implemented before the next rain event, but no longer than 10 business days after potential or actual non-stormwater discharges are discovered.	Delete references that specify types of corrective action timeframes for implementation, as these create a disinc identifying minor problems and create unproductive adr work.
C.5.e.iii. – Pleasant Hill – #23 – STL	C.5.e.iii.	Requires Permittees to report a list of mobile cleaners operating in their jurisdiction.	Delete, as this information is unavailable.
C.5.e.iii. – Pleasant Hill – #24 – STL	C.5.e.iii.	Requires Permittees to report a list and summary of specific outreach events and education conducted to the different types of mobile businesses	Delete and clarify that requirements to inspect mobile b abate discharges is covered by existing requirements e Provisions C.4 and C.5.
C.7.a. – Pleasant Hill – #25 – STL	C.7.a.	Permittees are required to mark and maintain "no dumping" markings on storm drain inlets.	Move this task to Provision C.2.
C.7.b. – Pleasant Hill – #26 – STL	C.7.b.	Requires Permittees to participate in or contribute to "advertising" campaigns on specified subjects and assess results.	Change "advertising" to "outreach" to make explicit that methods, including social media, may be used. Delete r specific subjects. Allow more flexibility.
C.9.c. – Pleasant Hill – #27 – STL	C.9.c.	Requires Permittees to observe pesticide applications by their contractors.	Delete requirement.
C.10.a.i.a. – Pleasant Hill – #28 – STL	C.10.a.i.a.	Requires Permittees to achieve a 70% load reduction by July 1, 2017	Extend this compliance date to 2018.

	Provision	Task or Requirement	Requested Adjustments
C.10.a.ii.b. – Pleasant Hill – #29 – STL	C.10.a.ii.b.	Requires Permittees to ensure private properties plumbed directly to municipal storm drains are equipped with full trash capture devices or to verify "low" trash generation rate. Requires Permittees to investigate and map these properties.	Delete the mapping requirement and integrate inspections and enforcement into Provision C.4 (Commercial and Industrial Inspections).
C.10.b.1.a. – Pleasant Hill – #30 – STL	C.10.b.1.a	Specifies maintenance frequencies for full trash capture devices based on trash generation rates.	Set minimum frequency of 1x/year for all devices, to be adjusted based on maintenance experience. Required maintenance frequency is determined mostly by amount of leaf litter and type of device.
C.10.b.1.c. – Pleasant Hill – #31 – STL	C.1O.b.1.c.	Requires Permittees to certify that full trash capture systems are maintained to meet standard.	State that systems are maintained, and maintenance program is designed to meet standard.
C.10.b.iv. – Pleasant Hill – #32 – STL	C.10.b.iv.	Allows a credit of up to 5% toward trash reduction requirement for source control actions such as product bans.	Increase maximum to 20% to fully credit existing product bans and to create incentive for future source control actions.
C.10.e.i. – Pleasant Hill – #33 – STL	C.10.e.i.	Creates a formula for crediting trash collected during additional creek and shoreline cleanups toward trash reduction requirement-at a 1:10 ratio, with a 5% maximum credit.	Make the ratio 1:3 and increase maximum credit to 10°/o.
C.10.e. – Pleasant Hill – #34 – STL	C.10.e.	Credits on-land cleanups and litter reduction only if visual assessments show a categorical change (e.g., from "very high" to "high" trash)	Allow interim credit for demonstrated actions intended to achieve categorical change.
C.10.a.iii. – Pleasant Hill – #35 – STL	C.10.a.iii.	Requires bioretention facilities to be equipped with a screen to qualify as full-trash-capture facilities.	Specify that these facilities qualify as full trash capture. Screens could cause flooding.
C.10.b.iv. – Pleasant Hill – #36 – STL	C.10.b.iv.	Requires observations of creeks and shorelines to determine whether trash control actions have prevented trash from discharging to receiving waters.	Restate purpose of observations, as it is not possible to determine that trash originated from storm drains.
C.10.e.ii. – Pleasant Hill – #37 – STL	C.10.e.ii.	Provides 1:10 ratio up to 10% maximum credit for actions to reduce direct discharge of trash (e.g. dumping, encampments).	Increase ratio to 1:3, with no maximum, as in some locations this is the predominant source of trash.

C.10.f.ii. – Pleasant Hill – #38 – STL	C.10.f.ii.	Produce an updated trash generation map each year.	Tie updated maps to compliance dates (for 70o/o and 100%).

CITY OF SAN BRUNO
PUBLIC WORKS DEPARTMENT
MAINTENANCE AND OPERATIONS

July 6, 2015

Mr. Bruce Wolfe
Executive Officer
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

Subject: Comments on the Tentative Order for the Reissued NPDES Stormwater Municipal Regional
Permit

Dear Mr. Wolfe:

The City of San Bruno appreciates this opportunity to comment on the Tentative Order for the reissued NPDES stormwater municipal regional permit ("MRP 2.0") that was recently released by the San Francisco Bay Regional Water Quality Control Board (Regional Water Board) staff.

General – Hope comments contribute to constructive dialog resulting in further revisions – San Bruno #1 – SKM

Our comments reflect the importance of developing permit requirements that are flexible, practical, and cost-effective while meeting the challenges of continuing to protect water quality in our local creeks and San Francisco Bay. Our intent is for these comments to contribute to a constructive dialog that will result in additional permit revisions.

Please note that this letter focuses on our highest priority areas of concern, which are Provisions C.3 (New Development and Redevelopment, especially the Green Infrastructure provision), C.10 (Trash Load Reduction), and C.11/12 (Mercury and PCBs Controls).

C.12. – San Bruno #2 – SKM

Of particular concern is that Provision C.12 (PCBs Controls) continues to fall well short of providing Permittees with a clear and feasible pathway to attaining compliance. Please see the below sections for more details.

General – Concur/support and incorporate by reference SMCWPPP's comments – San Bruno #3 – SKM

For detailed comments on other sections ofthe permit, please refer to the comment letter submitted separately by the San Mateo Countywide Clean Water Program (SMCWPPP). We concur with and support all of SMCWPPP's comments and incorporate them here by reference.

For each high priority issue that we have identified, a corresponding recommended revision to the Tentative Order is presented below, organized by each provision for which we are providing comments.

C.3- NEW DEVELOPMENT AND REDEVELOPMENT

C.3.b.i. – San Bruno #4 – SKM

C.3.b.i - Regulated Projects

Provision C.3.b requires that any Regulated Project that was approved before any C.3 requirements were in effect (i.e., does not have a stormwater control plan) and has not begun construction before MRP 2.0 takes effect must comply with provisions C.3.c and C.3.d (LID treatment and sizing requirements).

- Issue: Permittees do not have the legal authority to impose new requirements on projects with approved entitlements or development agreements, and therefore will face non-compliance with this requirement. Furthermore, it may be difficult for a project to change its site design and layout to accommodate LID treatment measures required by C.3.c and C.3.d.

  Requested Revision: Delete this requirement. It would have minimal water quality benefit and would likely lead to legal battles with developers. Only a small number of projects and a small percentage of impervious surface created/replaced in the region would be subject to this requirement. However, if the requirement remains, then at a minimum include language to allow flexibility in implementation (for example, "provide treatment to the extent feasible" and allow use of media filters) for projects that have prior tentative map approvals or development agreements.

C.3.c.i.(2)(b) – San Bruno #5 – SKM

C.3.c.i.(2)- LID Site Design

Permittees are required to collectively develop and adopt design specifications for pervious pavement systems, subject to Executive Officer approval. Countywide program guidance manuals already include pervious pavement specifications.

- Issue: The process for compliance with this provision is unclear (i.e., whether and what type of submittal is required, and by when). In addition, the definition of pervious pavement systems does not include grid pavements (e.g., turf block or plastic grid systems).

  Requested Revision: Allow Permittees to reference a regional or countywide pervious paving specification in their annual reports (including a web link to the document) that meets the intent of this provision. Expand the definition of pervious pavement systems to include grid pavements.

C.3.e.ii.(4) – San Bruno #6 – SKM

C.3.e.ii - Special Projects

The Special Projects criteria for LID treatment reduction credits include criteria for density expressed as Floor Area Ratio {FAR)[1] or Dwelling Units {DU) per acre. Both criteria are computed based on the size of the project site. The current permit allows jurisdictions to define FAR and calculate DU/acre consistent with their standard practices. MRP 2.0 prescribes specific definitions for each and requires that they be computed based on the total area of the site (e.g., DU/ac based on gross density[2]). The Permittees requested changes to the definitions as part of early input on the Administrative Draft and the changes were not incorporated.

- Issue: Permittees typically use a definition of gross density that excludes public rights-of-way. Using gross density as defined in the Tentative Order will result in a lower density value that may prevent some valuable high density projects from qualifying for LID treatment reduction credits. Similarly, Permittees would like to exclude public rights-of-way and public

[1] Floor area ratio is defined as the ratio of the total floor area on all floors of all buildings at a project site (except structures, floors, or floor areas dedicated to parking) to the total project area.

[2] Gross density is defined as the total number of residential units divided by the acreage of the entire site area, including land occupied by public rights-of-way, recreational, civic, commercial and other non-residential uses.

plaza areas from the computation of FAR.

Requested Revision: Change the definitions of FAR and gross density to exclude public plazas, public rights-of-way, and civic areas.

C.3.g.iv. – San Bruno #7 – SKM

C.3.g.iv- Hydromodification Management (HM) Standard- Methodology for Direct Simulation of Erosion Potential

The Tentative Order contains similar HM standards and requirements for Permittees to those in the current permit. In addition, the Tentative Order allows the Permittees to collectively propqse a method for sizing of HM facilities based on direct simulation of erosion potential, which may allow more efficient facility sizing.

- Issue: The method must be submitted to the Regional Water Board for review and adopted as a permit amendment before it can be applied. This administrative hurdle is unnecessary, as the method is consistent with the current HM standard (and it is the only requirement in the Tentative Order requiring an amendment), and will cause delay and uncertainty as to when the methodology can be used. Also, the provision contains several typos that make the requirements somewhat confusing.

  Requested Revision: Allow Executive Officer approval of the sizing methodology. Correct the following typos:

  - C.3.g.i- Move items (1) through (3) to after the first paragraph in which they are referenced.
  - C.3.g.ii.(3)- change "charges" to "charts" in the first sentence.
  - C.3.g.vii.(S)- delete the last bullet that refers to the Impracticability Provision, which is not included in the Tentative Order.

C.3.h.ii.(7) – San Bruno #8 – SKM

C.3.h -Operation and Maintenance of Stormwater Treatment Systems

- Issue: C.3.h.ii.(7) contains requirements for O&M Enforcement Response Plans. Section (c) requires that corrective actions for identified O&M problems with pervious pavement, treatment, and HM systems be implemented within 30 days of identification, and if more than 30 days are required, a rationale must be recorded in the Permittee's inspection tracking database. The process of contacting and educating the property owner, allowing the property owner to arrange for maintenance work to be completed, and following up with a re-inspection typically takes more than 30 days. In the Phase I Manager's early input on the Administrative Draft, a correction period of 90 days was requested, consistent with current practice by some Permittees and some existing maintenance agreements.

  Requested Revision: Allow 90 days for completion of permanent corrective actions.

C.3.h.ii.(6)(b) – San Bruno #9 – SKM

- Issue: Changes were made to allow Permittee to track inspections by the number of sites instead of numbers of treatment/HM facilities, which was an improvement, but inspection of at least 20% of the total number of Regulated Projects is required each year. Permittees have requested more flexibility around that number while still meeting the requirement of inspection of each site at least once every five years.

C.3.h.ii.(6)(b) – San Bruno #10 – SKM

In addition, more flexibility needs to be given to those Permittees that only have a small number of sites, so that they do not have to

inspect them more frequently than necessary.

Requested Revision: Change language to require inspection of "approximately 20%" of sites per year. Establish a minimum inspection frequency for each site of every two years.

C.3.h. – San Bruno #11 – SKM

Also, correct the following typos:

- C.3.h.ii. (7) – begin first sentence with "Permittees shall prepare and maintain..."
- C.3.h.v. (4) - Change "XX" Annual Report to "2017" Annual Report.

C.3.j. – San Bruno #12 – SKM

C.3.j -Green Infrastructure Planning and Implementation

This provision will be one of the most challenging portions of C.3 to implement and has a significant level of uncertainty in terms of what will constitute compliance. It also appears that the level of effort and resources required to implement Provision C.3 could be dramatically higher than implementing MRP 1.0 due to the new Green Infrastructure (GI) requirements.

C.3.j.i., C.11, C.12 – San Bruno #13 – SKM

Provision C.3.j.i requires each Permittee to develop a GI Plan. The GI Plan must include: mechanism to prioritize and map potential GI project areas; maps and lists generated by this mechanism, for implementation within 2, 7, and 12 years of the Permit effective date; targets for amounts of retrofitted impervious surface within 2, 7, 12, 27, and 52 years; tracking and mapping of installed GI systems; streetscape design and construction details and standards; a list of updates and modifications to existing related Permittee planning documents; and reporting on all of the above elements. Permittees must also prepare and submit annually a list of planned and potential GI projects, based on a review of capital improvement projects, and a summary of how each project will include GI to the Maximum Extent Practicable (MEP) or why it was impracticable to implement GI.

- Issue: The language in Provision C.3.j needs to be more consistent with the expectations in Provisions C.11 and C.12 for achieving PCB and mercury load reductions with GI. Discussions with Regional Water Board staff on C.11 and C.12 have suggested that load reductions required by Glover the MRP 2.0 permit term can be accomplished by private development and redevelopment, whereas C.3.j only refers to public retrofits.

  Requested Revision: Make more explicit in C.3.j (as well as in C.11/12) that private development and redevelopment as well as public projects will count toward meeting PCB and mercury load reductions, and that constructed public GI projects within the permit term are not required for compliance with GI pollutant load reductions.

C.3.j.i.(1) – San Bruno #14 – SKM

- Issue: Developing a comprehensive GI Plan will take time and significant resources, and the timeframes in the Tentative Order for completion of the Plan are unrealistic. For example, the framework for the GI Plan has to be developed and approved by local governing bodies or city/county managers within one year of the Permit effective date. This is a very short timeframe given the effort required to coordinate and educate internal departments, educate upper level staff and elected officials, prepare the framework, conduct resource planning, and accommodate lead times for bringing the framework to governing bodies. Additionally, the GI Plan must be completed and submitted with the 2019 Annual Report (three and one-half years from the expected Permit effective date). Completing a GI Plan will be a complex and time-intensive process that will require a great deal of municipal interdepartmental coordination and resource prioritization and mapping of potential and

planned projects may not be able to be completed within two years of the Permit effective date.

Requested Revision: Provide additional time to complete and obtain governing body approval of the GI framework; e.g. extend the deadline to the required reporting date of September 15, 2017. Provide the entire permit term to complete the GI Plan. Eliminate the two-year deadline to complete prioritization, mapping, and begin implementation of planned/potential projects (before the GI Plan is completed), and include these efforts in the GI Plan development period.

C.3.j.i.(1)(a) – San Bruno #15 – SKM

- Issue: Prioritization and mapping of potential and planned projects will be a major, resource-intensive effort, especially for those smaller jurisdictions that do not have GIS data layers already available. Additional flexibility in approaches to mapping and prioritization is needed. In addition, the time intervals for planning should be aligned with fiscal years, and made consistent with the time intervals for load reductions in C.11/12.

  Requested Revision: The mechanisms used to develop the GI Plan and priorities should include other less complex tools in addition to the Green Plan-IT tool. The time intervals should be changed to FY 19-20, FY 24-25, and FY 29-30 (to align with C.11/12 load reduction reporting intervals of 2020 and 2030).

C.3.j.i.(1)(c) – San Bruno #16 – SKM

- Issue: Provision C.3.j.i (1)(c) requires Green Infrastructure Plans to include "targets for the amount of impervious surface within the Permittee's jurisdiction to be retrofitted" within 2, 7, 12, 27, and 52 years of the Permit effective date. It is unclear how these "targets" are to be established by each Permittee. In addition, the timeframes for establishing "targets" (we would prefer the term "projections") for the amount of impervious surface retrofitted do not line up with the C.11/12 load reduction timeframes, making it difficult to calculate projected load reductions.

  Requested Revision: Allow the development of "projections" instead of "targets", and allow Permittees to include projected private development as well as public projects. Allow projections to be developed for the years 2020, 2030, 2040, and 2065, consistent with C.11/12 and with other municipal planning documents.

C.3.j.ii. – San Bruno #17 – SKM

- Issue: Provision C.3.j.ii requires early implementation of GI, focused on identifying and implementing public projects that have potential for GI measures (including LID treatment) within the permit term. It is unclear how compliance with this section will be determined. The process for review of planned capital projects needs to be more defined and objective, in order to avoid disagreements with Regional Water Board staff as to what are "missed opportunities". There also needs to be the recognition that while it may be technically feasible to add LID features to a capital project, the funding for the additional features and the ongoing maintenance of the LID features may not be available. Implementation (i.e., design and construction) during the Permit term of GI projects that are not already planned and funded will be very challenging for most Permittees.

  Requested Revision: Efforts during the MRP 2.0 term should focus on development of long-term GI Plans and opportunistic implementation of GI projects where feasible and where funding is available. Add language proposed by the Permittees as early input to the

Administrative Draft Permit (as shown in the footnote below[3]) that would allow for consistent review of capital projects for GI opportunities, based on specified criteria.

C.IO- TRASH LOAD REDUCTION

C.10.a.i. – San Bruno #18 – SKM

C.IO.a.i- Trash Reduction Requirement Schedule

- Issue: Reductions become increasingly more challenging the closer Permittees move towards the trash reduction goal of "no adverse impacts". Provision C.IO.a.i (Schedule) requires a 70% load reduction by 2017. This schedule is too rigorous and should be extended to allow for more time to develop/implement sustainable control measures. Most of the areas remaining to address are moderate trash generating areas and willing likely require more innovative controls that will have to be piloted.

  Requested Revision: We request that the 70% load reduction time schedule, set for 2017 in the Tentative Order, be extended at least to 2018.

C.10.a.ii. – San Bruno #19 – SKM

C.IO.a.ii.b- Trash Generation Area Management (Private Drainage Areas)

- Issue: Provision C.10.a.ii.b (Trash Generation Area Management) requires Permittees to map and assess ALL private drainages 5,000 ft^2 and greater, determine the level of trash present in these areas, and ensure that no further actions are needed. The intent of mapping these drainages is unclear. Mapping would require a significant undertaking that would result in minimal water quality benefit. Ensuring that private drainages are at a "low" trash generation level does not require mapping. Areas can be identified by modifying existing municipal inspection programs already in place.

  Requested Revision: We request that the mapping requirement be removed from this provision. As an alternative, Permittees should be required to: 1) identify high priority areas that generate moderate, high or very high levels of trash and are plumbed directly to their storm drain systems, and 2) cause these areas to be managed to a level equivalent to the performance of a full capture system or to a low trash generation level.

C.10.a.iii. – San Bruno #20 – SKM

- Issue: Throughout the Bay Area thousands Green Infrastructure (C.3 compliant) facilities have been constructed on properties over the last 10+ years. These facilities were designed consistent with the new and redevelopment requirements and perform at a level similar to typical trash full capture systems. These systems have been designed to prevent flooding and effectively remove pollutants from stormwater. Provision C.10.a.iii (Mandatory Minimum Full Trash Capture Systems) currently requires Permittees to install a screen (Smm) to the overflow pipes of all Green Infrastructure facilities before these devices can be considered full capture systems. Screening the overflow pipes would be out of the scope of the municipality's authority, as nearly all treatment facilities are privately owned and

[3] Proposed language: "Permittees shall review and analyze appropriate projects within the Permittee's capital improvement program, and for each project, assess the opportunities and associated costs of Incorporating LID into the project. The analysis shall consider factors such as grading and drainage, pollutant loading associated with adjacent land uses, uses of available space with the project area, condition of existing infrastructure, opportunities to achieve multiple benefits such as providing aesthetic and recreational resources, and potential availability of incremental funding to support LID elements along with other relevant factors... Permittees will collectively evaluate and develop guidance on the criteria for determining practicability of incorporating green infrastructure measures into planned projects."

maintained. Additionally, adding screens to existing facilities would have unknown effects to the performance of these systems and would likely increase the maintenance and flooding if retrofitted with screens. The Water Board to reconcile this issue. The requirements for the sizing and design of green infrastructure facilities are now well established. Requiring modifications to these designs for trash just doesn't make sense. The Water Board established provisions requiring these facilities based on their ability to remove pollutants attached to small particles less O.Imm in size, but is now requiring modifications for trash items that are at least 20 times greater in size? Trash items ARE effectively removed by these facilities without modification.

Requested Revision: We request that the Water Board removed the requirement for "screening" all Green Infrastructure treatment facilities installed and maintained consistent with provision C.3 and in the Permit deem that these facilities are equivalent to full capture systems.

C.10.b.i.a. – San Bruno #21 – SKM

C.lO.b.i.a- Maintenance (of Full Trash Capture Systems)

- Issue: Provision C.lO.b.i.a (Maintenance of Full Capture Systems) currently requires maintenance of small capture devices based on the level of trash generated in the surrounding area. Maintenance frequencies based on trash generation is inconsistent with the experience and knowledge of Permittees. Maintenance frequencies are site specific and are mostly affected by the amount of vegetative material (typically comprising over 85% of the debris captured by a device) that reaches the device and the size of the inlet vault, not the amount of trash generated in the surrounding area.

  Requested Revision: As an alternative to arbitrary maintenance frequencies we request that the TO be revised to require Permittees to develop and implement Permittee-specific maintenance programs to achieve/maintain full capture criteria. Permittees would then report on the implementation oftheir maintenance programs, adaptation of these programs and any issues that need to be addressed. Tailoring maintenance programs to maintenance needs of specific devices is the only way to ensure adequate maintenance of these devices into the future.

C.10.b.iv. – San Bruno #22 – SKM

C.lO.b.iv- Source Controls

The most important actions that can be taken by Permittees are those that eliminate the generation of litter prone items in perpetuity. Bay Area Permittees have been national leaders on taking actions to eliminate the sale or distribution of liter prone items. Nearly every Permittee in the Bay Area has adopted an ordinance focused at eliminating certain types of trash in our creeks and the Bay. These actions took significant political support, public resources and were done in partnership with environmental NGOs.

- Issue: Permittees to-date have focused on a instituting a number of different types of source control actions. Data collected by Permittees indicated that each individual action reduces between 5 and 10% of the trash found in stormwater on average. These reductions are likely not observed by visual assessment protocols because they are only precise enough to detect reductions greater than 25%. Therefore, without a specific reduction value for source controls, reductions associated with these actions may never be valued.

The maximum of 5% reduction for all source control actions arbitrary and inconsistent with our currently knowledge of the percentage of trash in stormwater associated with specific litter-prone items associated with source control actions. The programs put into place to address these litter prone items are effective and directly impact stormwater quality.

Requested Revision: We request that the TO be revised to increase the maximum reduction value for all source control actions combined to 25%. Supporting evidence would be required to claim reductions associated with source controls.

C.10.b.v. – San Bruno #23 – SKM

C.IO.b.iv- Receiving Water Observations

- Issue: The TO requires the Permittees conduct receiving water observations downstream from trash generation areas converted to "low" trash generation. By requiring Permittees to focus on areas downstream of control actions, appears that receiving water observations could be used to judge compliance with reductions associated with municipal stormwater. Confusing, because the process to judge compliance with stormwater reductions is outlined in the TO – full capture, visual assessments, source control values, and offsets associated with cleanups.

  We are supportive of an ambient monitoring program that would continue to evaluate trash conditions or levels in local creeks and rivers using a cost-effective and practical protocol. This protocol, however, has not yet been developed.

  Requested Revision: We request that the TO language be revised to state that purpose of receiving water observations is "...to evaluate the level of trash present in receiving waters over time, and to the extent possible determine 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)." Additionally, we are willing to be a partner with the Water Board and NGOs in developing and pilot-testing a protocol during the permit term to achieve this purpose.

C.10.e.i. – San Bruno #24 – SKM

C.IO.e.i- Optional Trash Load Reduction Offset Opportunities- Creek and Shoreline Cleanups

Creek and shoreline cleanups are important actions that promote community involvement, create awareness of trash issues, and improve water quality. These actions have water quality value, are supported by the community and environmental NGOs, and should be accounted for accordingly in the load reduction accounting method.

- Issue: While we appreciate the inclusion of load reduction benefits associated with creek and shoreline cleanups, the 5% maximum offset for these important actions is too small and inconsistent with the environmental benefit. Additionally, the arbitrary 10:1ratio of trash removed to offset value is too large and under values the benefits of these actions.

  The requirement for a minimum cleanup frequency of 2x/year at each specific site creates inflexibility and is too constraining. Some Permittees may choose to cleanup many sites 1x/year rather than a small number of sites 2x/year. What's important is that trash is being removed from creeks and shorelines, not how many times at a specific site.

  Requested Revision: We request that the TO be revised to:

  - Increase the maximum offset for creek and shoreline cleanups to 10%;

- Reduce the ratio of trash removed to reduction value to 3:1, similar to other types of mitigation programs; and,
- Remove the requirement that a site be cleanup at least 2x/year before claiming an offset.

C.10.e.ii. – San Bruno #25 – SKM

C.10.e.i- Optional Trash Load Reduction Offset Opportunities- Direct Discharge Trash Controls

This offset is intended to address trash impacts associated with non-stormwater pathways to creeks and rivers such as illegal dumping directly into water bodies. These pathways directly impact water bodies and at some sites serve as the dominant source of trash. Programs that address trash from direct discharges should be accounted for accordingly in the load reduction accounting method.

- Issue: While we appreciate the inclusion of load reduction benefits associated with direct dumping, the 10% maximum offset for these important programs is too low and inconsistent with the environmental benefit of these programs. Additionally, the arbitrary 10:1 ratio of trash removed to offset value is too large and under values the benefits of these actions. Lastly, Permittees post-2016 may identify direct discharges as an important source of trash to receiving waters and therefore the 2016 Annual Report should not be the only timeframe when Permittees can submit a plan to address these sources.

  Requested Revision: We request that the TO be revised to:

  - Increase the maximum offset for programs addressing direct discharges to 25%; and,
  - Reduce the ratio of trash removed to reduction value to 3:1, similar to other types of mitigation programs.
  - Allow for submittals of plans to control direct discharges post-2016.

C.10.f. – San Bruno #26 – SKM

C.10.f- Reporting

- Issue: Compliance with NPDES permits is determined by the Water Board. Provision C10.f.v.b requires the Permittees to "submit a report of non-compliance" if it cannot demonstrate the attainment of 70% reduction, which therefore assumes that compliance determinations are made by the Permittee.

  Requested Revision: We request that the Water Board revise this provision to require that a Permittee that cannot demonstrate a 70% reduction, "submit a report and updated Long-term Trash Load Reduction Plan that describes actions to comply with the mandatory deadlines in a timely manner..."

C.11. – San Bruno #27 – SKM

C.11- MERCURY CONTROLS

Provisions C.11.a – c in the Tentative Order generally parallel C.12.a- c. Therefore, the below comments on those provisions for C.12 (PCBs Controls) also generally apply to C.11 (Mercury Controls).

C.12. – General – San Bruno #28 – SKM

C.12 - PCBs CONTROLS

PCBs are a highly persistent (i.e., slow to degrade) legacy pollutant that have been in San Francisco Bay for decades and likely will remain in the Bay for decades to come. Over the past 15 years, Bay Area

municipalities in collaboration with the Regional Monitoring Program (RMP) have conducted extensive field studies and gained considerable knowledge about the distribution of PCBs in the Bay Area environment. Due to widespread uses and lack of regulation over many decades (i.e., 1930s -1970s), this pollutant was widely dispersed in soils and sediments throughout the urban landscape draining to the Bay. Similarly, PCBs are widely dispersed within the Bay's sediments.

Bay Area municipalities have also made a great deal of progress over the past 15 years towards understanding the types of control measures that are most cost-effective in reducing PCBs discharges in stormwater. Although this evaluation of controls is ongoing, no controls identified to-date are particularly cost-effective, apart from the 1979 ban by USEPA on PCBs manufacture, import, export, and distribution in commerce in the United States. The ban represented effective "true source control" but came much too late to have prevented the widespread distribution of PCBs into the urban landscape and the Bay. With further true source control generally not an option, the current challenges in addressing PCBs are not surprising.

Extensive source property identification programs led by Bay Area municipalities have identified a small number of PCBs "hot spots" in watersheds across the Bay Area. These hot spots are mostly associated with properties that are currently under cleanup orders from the Regional Water Board, EPA, or DTSC, or are currently permitted by these agencies or could be in the future. These sites are generally outside of the control of local agencies.

It may also be possible to reduce PCBs discharges in stormwater over the next few decades by requiring (as the permit does now through provision C.3) stormwater treatment on private properties as they are redeveloped. Retrofitting of landscape-based treatment structures (e.g., "Green Streets") into the public right-of-way is another approach that provides multiple benefits, but is highly resource and time intensive. Planning for a long-term (i.e., decadal) program to retrofit such Green Infrastructure into the urban landscape has been incorporated into the Tentative Order, but implementation will mostly occur during future permit terms and require several decades.

Additionally, although highly uncertain, there may be opportunities to prevent future contamination as buildings containing PCBs that were constructed during the 1950s- 1970s are demolished. However, the rate at which buildings are demolished and redevelopment occurs, and therefore the timeframe for reduction of PCBs associated with these sources and areas, is generally out of the control of local agencies.

This lack of control over redevelopment and demolition, and the unknowns about the extent and magnitude of additional "hot spots" creates a high level of uncertainty in the level of implementation that cities and counties can commit to during the next five year permit term. In turn, the uncertainty in implementation creates compliance uncertainty when compliance targets in the permit include assumptions regarding the rate of redevelopment and demolition.

Provision C.12 of the Tentative Order uses a framework that is a hybrid of two approaches, requiring: 1) BMP implementation and 2) pollutant load reduction. The required BMPs are Green Infrastructure and managing PCBs-containing materials and wastes during building demolition activities. However, it appears that the primary intent is to require Permittees to demonstrate a total cumulative Bay Area-wide PCBs load reduction of 3 kg/year over the permit term. Our overarching concern is that Provision C.12 continues to fall well short of providing Permittees with a clear and feasible pathway to attaining compliance with this load reduction requirement.

It is also important to note that the level of effort and associated resources required to implement Provision C.12 as set forth in the Tentative Order is highly uncertain. Much of the cost of implementing PCBs control programs during the current permit term was offset by a grant from USEPA that will end in 2016. The availability of grant or other funding for implementing Provision C.12 of the reissued permit is unknown. As a starting point, making all of the below recommended revisions would result in much greater certainty regarding the level of effort and associated resources that would be required to comply with Provisions C.12, and create a much clearer pathway towards complying with the MRP.

C.12.a. – San Bruno #29 – SKM

C.12.a -Implement Control Measures to Achieve Load Reductions

The Tentative Order appears to require Permittees to reduce PCBs loads to the Bay by 3 kg/year by the end of the permit term. The approach includes developing an accounting system for Executive Officer approval early in the permit term that would form the basis for the load reductions credited to the various PCBs controls.

- Issue: There is a lack of a clear and feasible pathway for Permittees to attain compliance with the load reduction requirements. Most factors that would be key to meeting the criteria are uncertain and many are not within Permittee control (e.g., extent of source properties that will be found, building demolition rates, and redevelopment rates), making achievement of compliance uncertain.

  Requested Revision: Load reduction performance criteria should not be the point of compliance. Compliance should be based upon implementing PCBs control programs designed to achieve a load reduction target (such as a Numeric Action Level or similar mechanism for triggering requirements for additional action and reporting), based on an interim accounting method (see next section). The target would be informed by what the BMP programs could achieve, based on the accounting system, which would agreed upon upfront and incorporated into the permit.

C.12.a. – San Bruno #30 – SKM

- Issue: The schedule for the following reporting requirements in Provision C.12.a. is unrealistic.
  - Provision C.12.a.iii.(1)- February 1, 2016 report providing "a list of watersheds (or portions therein) where PCBs control measures are currently being implemented and those in which control measures will be implemented (C.12.a.ii.(1)) during the term of this permit as well as the monitoring data and other information used to select the watersheds."
  - Provision C.12.a.iii.(2) - 2016 Annual Report providing "the specific control measures (C.12.a.ii.(2)) that are currently being implemented and those that will be implemented in watersheds identified under C.12.a.iii.(1) and an implementation schedule (C.12.a.ii.(3)) for these control measures. This report shall include: .... [Scope, start dates, progress milestones, schedules, roles and responsibilities of Permittees, etc...]....".

  Requested Revision: Extend the deadlines for the above reports to the 2017 Annual Report.

C.12.b. – San Bruno #31 – SKM

C.12.b. Assess Load Reductions from Stormwater

SMCWPPP, other countywide stormwater programs, and Regional Water Board staff recently worked together to develop an interim accounting method. It was intended to provide a basis for stipulated load reduction benefits for implementation of the primary PCBs control programs that Permittees anticipate implementing during the MRP 2.0 permit term (this interim accounting method would be revised before the next permit term). We appreciate that Regional Water Board staff included much of the information developed for the interim accounting method in the fact sheet.

- Issue: Values for certain key accounting parameters for managing PCBs-containing materials and wastes during building demolition activities were left out.

  Requested Revision: Include in the interim accounting method values for all parameters to allow for scrutiny during the public permit review process, given the uncertainty in these values. It is especially important to include values for all parameters associated with managing PCBs-containing materials and wastes during building demolition activities, including the fraction of PCBs mass in a building that enters the MS4 during demolition in the absence of enhanced controls, which is particularly uncertain. Stormwater programs can also provide similar values for mercury to include in the fact sheet as well.

C.12.b.iii. – San Bruno #32 – SKM

- Issue: Requirement to formally submit load reduction assessment methodology early in the permit term for Executive Officer approval creates uncertainty in the load reduction benefit for each PCBs control program.

  Requested Revision: Omit the requirement to submit load reduction accounting method early in the permit term. Instead, the interim accounting method should be finalized, incorporated into the permit, and then used to calculate PCBs load reductions during Permittee annual reporting.

C.12.a. & c. – San Bruno #33 – SKM

- Issue: Water Board staff has acknowledged that load reduction performance criteria are not numeric effluent limits. This should be made clear in the permit. In addition, further clarity is needed regarding the legal definition of the performance criteria and implications with regard to enforcement and potential third party lawsuits.

  Requested Revision: PCBs load reduction performance criteria should be in the form of Numeric Action Levels or a similar mechanism for triggering requirements for additional action and reporting. In addition, the permit should include contingency language that would allow for achieving compliance if a good-faith demonstration of efforts and actions by Permittees consistent with permit requirements falls short of achieving the load reduction performance criteria.

C.12.b.iii. – San Bruno #34 – SKM

- Issue: Provision C.12.b.iii requires that Permittees submit Permittee-specific proportions of load reduction responsibilities and supporting data to the Water Board by April 1, 2016 – four months after the effective date of the permit. Although Permittees and the RMP have spent considerable time and resources towards identifying PCB hot spots and watersheds producing greater levels of PCBs to the Bay, data have not been collected at a level to which proportions of load reduction responsibilities could confidently be assigned to Permittees. Furthermore, assigning Permittee-specific responsibilities with high levels of uncertainty upon which compliance could be based is not good public policy and could inadvertently

unduly place responsibilities upon certain Permittees requiring the spending of public resources towards fictitious goals not based in reality.

Requested Revision: Delete requirement to develop and submit Permittee-specific proportions of load reduction responsibilities.

C.12.c. – San Bruno #35 – SKM

C.12.c. Plan and Implement Green Infrastructure to Reduce PCBs Loads

Provision C.12.c of the Tentative Order requires Permittees to implement Green Infrastructure projects during the term of the permit to achieve PCBs load reductions of 120 g/year over the final three years of the permit term. Additionally, Permittees are required to prepare a reasonable assurance analysis to demonstrate quantitatively that PCB load reductions of at least 3 kg/yr throughout the Permit area will be achieved by 2040 through implementation of Green Infrastructure plans required by Provision C.3.j.

- Issue: It is unnecessary to include performance criteria for PCBs load reductions through implementation of Glover the reissued permit term. PCBs load reductions will not be the driver for Gl implementation during the reissued permit term. Regional Water Board staff has noted that based on extrapolation of data from the current permit term, the proposed metrics should be met via redevelopment in old industrial areas. Thus the proposed criteria would not influence Gl implementation during the reissued permit term and meeting them would instead be dependent upon an activity that is not under Permittee's control. While we expect to learn valuable lessons via opportunistic early implementation of Gl retrofit projects through Provision C.3.j.ii, the pollutant load reductions associated with these retrofits implemented over MRP 2.0 is anticipated to be relatively small.

  Requested Revision: Provision C.12.c should be deleted.

C.12.c. – San Bruno #36 – SKM

- Issue: It does not make sense to prejudge that PCBs load reductions of at least 3 kg/yr throughout the Permit area should be achieved by 2040 through implementation of Green Infrastructure plans. The actual load reductions that Permittees expect to achieve via Green Infrastructure will be determined during the planning and reasonable assurance analysis required by Provision C.12.d., as part of planning for achieving the overall PCBs TMDL allocations.

  Requested Revision: Provision C.12.c should be deleted.

C.12.f. – San Bruno #37 – SKM

C.12.f. Manage PCB-containing Materials and Wastes during Building Demolition

Provision C.12.f requires development of a program to manage PCBs in building materials and wastes during demolition. Given the large standing stock of PCBs known to be present in certain buildings in the Bay Area, there could potentially be significant benefits to implementing the proposed control program. However, we are not aware that any data exist regarding the amount of PCBs-containing ma'terials that are released to the ground during demolition and then mobilized into the MS4 by urban runoff, making it challenging to project with any certainty the actual water quality benefit of the proposed control program. Cost-effectiveness relative to other PCBs controls is also highly uncertain at this time.

- Issue: The various potential problems associated with PCBs in building materials (i.e., water quality, human exposure at the site, and disposal) should be addressed holistically on a statewide or federal basis rather than focusing on water quality controls in the Bay Area only. Meeting the Tentative Order's three year timeframe to develop a program to manage

PCBs in building materials and wastes during demolition would likely require administration at the local level. This inappropriate and rushed approach would result in highly inefficient use of scarce public funds and likely be ineffective at comprehensively addressing the problems. It would also likely result in inconsistent programs across the Bay Area.

Recommended Solution: Allow at a minimum the entire permit term for Permittees to work with the State, USEPA, the building industry, and other stakeholders to attempt to develop a comprehensive statewide or federal program analogous to current programs for asbestos and lead paint. Given the multiple environmental and public health issues in play, USEPA should play a large role in development of this program.

We look forward to continuing to work with you and your staff to resolve the issues described in this letter. Please contact me at 650-616-7179 if you have any questions or would like to further discuss any of our comments.

'pcerely

J Burch
City of San Bruno
Deputy Director Maintenance and Operations
225 Huntington Ave
San Bruno, CA 94066
(650)616-7179
Fax (650)873-0285
jburch@sanbruno.ca.gov

CITY OF SAN CARLOS

CITY COUNCIL
600 ELM: STREET
SAN CARLOS, CALIFORNIA 94070

TELEPHONE:(650) 802-4219
FAJ{:(650)595-6719

WEB: www.cityofsancarlos.org

July 10, 2015

Mr. Bruce Wolfe
Executive Officer
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

governing bodies. Additionally, the GI Plan must be completed and submitted with the 2019 Annual Report (three and one-half years from the expected Permit effective date).

Subject: Comments on the Tentative Order for the Reissued NPDES Stormwater Municipal Regional Permit

Dear Mr. Wolfe:

The City of San Carlos appreciates this opportunity to comment on the Tentative Order for the reissued NPDES stormwater municipal regional permit ("MRP 2.0") that was recently released by the San Francisco Bay Regional Water Quality Control Board (Regional Water Board) staff.

General – Hope comments contribute to constructive dialog resulting in further revisions – San Carlos #1 – SKM

Our comments reflect the importance of developing permit requirements that are flexible, practical, and cost-effective while meeting the challenges of continuing to protect water quality in our local creeks and San Francisco Bay.

In general, the new permit adds significantly to the City's cost of compliance from the last permit, and so those costs will have to be found within the City's budget, displacing other important city priorities.

Please note that this letter focuses on our highest priority areas of concern, which are Provisions C.3 (New Development and Redevelopment, especially the Green Infrastructure provision), C.lO (Trash Load Reduction), and C.l2 (PCBs Controls).

C.12. – San Carlos #2 – SKM

Of particular concern is that Provision C.12 (PCBs Controls) continues to fall well short of providing the City with a clear and feasible pathway to attaining compliance. Please see the below sections for more details.

General – Concur/support and incorporate by reference SMCWPPP's comments – San Carlos #3 – SKM

For detailed comments on other sections of the permit, please refer to the comment letter submitted separately by the San Mateo Countywide Clean Water Program (SMCWPPP). We concur with and support all of SMCWPPP's comments and incorporate them here by reference.

C.3 - NEW DEVELOPMENT AND REDEVELOPMENT

governing bodies. Additionally, the GI Plan must be completed and submitted with the 2019 Annual Report (three and one-half years from the expected Permit effective date).

C.3.j.i.(1) – San Carlos #4 – SKM

- Issue: Developing a comprehensive Green Infrastructure (GI) Plan will take time and significant resources, and the timeframes in the Tentative Order for completion of the Plan are unrealistic. For example, the framework for the GI Plan has to be developed and approved by local governing bodies or city/county managers within one year of the Permit effective date. This is a very short timeframe given the effort required to coordinate and educate internal departments, educate upper level staff and elected officials, prepare the framework, conduct resource planning, and accommodate lead times for bringing the framework to

Completing a GI Plan will be a complex and time-intensive process that will require a great deal of municipal interdepartmental coordination and resources. Prioritization and mapping of potential and planned projects may not be able to be completed within two years of the Permit effective date.

Requested Revision: Provide additional time to complete and obtain governing body approval of the GI framework; e.g. extend the deadline to the required reporting date of September 15, 2017. Provide the entire permit term to complete the GI Plan. Eliminate the two-year deadline to complete prioritization, mapping, and begin implementation of planned/potential projects (before the GI Plan is completed), and include these efforts in the GI Plan development period.

C.3.j.ii. – San Carlos #5 – SKM

- Issue: Provision C.3.j.ii requires early implementation of GI, focused on identifying and implementing public projects that have potential for GI measures (including LID treatment) within the permit term. It is unclear how compliance with this section will be determined. The process for review of planned capital projects needs to be more defmed and objective, in order to avoid disagreements with Regional Water Board staff as to what are "missed opportunities". There also needs to be the recognition that while it may be technically feasible to add LID features to a capital project, the funding for the additional features and the ongoing maintenance of the LID features may not be available. Implementation (i.e.. design and construction) during the Pennit tenn of GI projects that are not already planned and funded will be vecy challenging for most Permittees.

Requested Revision: Efforts during the MRP 2.0 term should focus on development of long-term GI Plans and opportunistic implementation of GI projects where feasible and where funding is available. Add language proposed by the Permittees as early input to the Administrative Draft Permit (as shown in the footnote below[1]) that would allow for consistent review of capital projects for GI opportunities, based on specified criteria.

C.lO - TRASH LOAD REDUCTION

C.10.a.i. – San Carlos #6 – SKM

- Issue: Reductions become increasingly more challenging the closer Permittees move towards the trash reduction goal of "no adverse impacts". Provision C.IO.a.i requires a 70% load reduction by 2017. This schedule is too rigorous and should be extended to allow for more time to develop/implement sustainable control measures. Most of the areas remaining to address are moderate trash generating areas and willing likely require more innovative controls that will have to be piloted.

Requested Revision: We request that the 70% load reduction time schedule, set for 2017 in the Tentative Order, be extended at least to 2018, with additional consideration given to extending the 2022 date for 100% trash load reduction as well.

- governing bodies. Additionally, the GI Plan must be completed and submitted with the 2019 Annual Report (three and one-half years from the expected Permit effective date).

C.10.a.iii. – San Carlos #7 – SKM

Issue: Throughout the Bay Area thousands Green Infrastructure (C.3 compliant) facilities have been constructed on properties over the last 10+ years. These facilities were designed consistent with the new and redevelopment requirements and perform at a level similar to typical trash full capture systems. These systems have been designed to prevent flooding and effectively remove pollutants from stormwater. Provision C.1O.a.iii (Mandatory Minimum

Full Trash Capture Systems) currently requires Permittees to install a screen (5mm) to the overflow pipes of all Green Infrastructure facilities before these devices can be considered full capture systems. Screening the overflow pipes would be out of the scope of the municipality's authority, as nearly all treatment facilities are privately owned and maintained. Additionally, adding screens to existing facilities would have unknown effects to the performance of these systems and would likely increase the maintenance and flooding if retrofitted with screens. The Water Board to reconcile this issue. The requirements for the sizing and design of green infrastructure facilities are now well established. Requiring modifications to these designs for trash just doesn't make sense. The Water Board established provisions requiring these facilities based on their ability to remove pollutants attached to small particles less O.lmm in size, but is now requiring modifications for trash items that are at least 20 times greater in size? Trash items ARE effectively removed by these facilities without modification.

Requested Revision: We request that the Water Board remove the requirement for "screening" all Green Infrastructure treatment facilities installed and maintained consistent with provision C.3 and in the Permit deem that these facilities are equivalent to full capture systems.

C.12 - PCBs CONTROLS

C.12. – General – San Carlos #8 – SKM

Bay Area municipalities have also made a great deal of progress over the past 15 years towards understanding the types of control measures that are most cost-effective in reducing PCBs discharges in stonnwater. Although this evaluation of controls is ongoing, no controls identified to-date are particularly cost-effective, apart from the 1979 ban by USEPA on PCBs manufacture, import, export, and distribution in commerce in the United States. The ban represented effective "true source control" but came much too late to have prevented the widespread distribution of PCBs into the urban landscape and the Bay. With further true source control generally not an option, the current challenges in addressing PCBs are not surprising.

Extensive source property identification programs led by Bay Area municipalities have identified a small number of PCBs "hot spots" in watersheds across the Bay Area. These hot spots are mostly associated with properties that are currently under cleanup orders from the Regional Water Board, EPA, or DTSC, or are currently permitted by these agencies or could be in the future. These sites are generally outside of the control of local agencies.

It may also be possible to reduce PCBs discharges in stormwater over the next few decades by requiring (as the permit does now through provision C.3) stormwater treatment on private properties as they are redeveloped. Retrofitting of landscape-based treatment structures (e.g., "Green Streets") into the public right-of-way is another approach that provides multiple benefits, but is highly resource and time intensive. Planning for a long-term (i.e., decadal) program to retrofit such Green Infrastructure into the urban landscape has been incorporated into the Tentative Order, but implementation will mostly occur during future permit terms and require several decades.

Additionally, although highly uncertain, there may be opportunities to prevent future contamination as buildings containing PCBs that were constructed during the 1950s - 1970s are demolished. However, the rate at which buildings are demolished and redevelopment occurs, and therefore the timeframe for reduction of PCBs associated with these sources and areas, is generally out of the control of local agencies.

magnitude of additional "hot spots" creates a high level of uncertainty in the level of implementation that

Full Trash Capture Systems) currently requires Permittees to install a screen (5mm) to the overflow pipes of all Green Infrastructure facilities before these devices can be considered

This lack of control over redevelopment and demolition, and the unknowns about the extent and magnitude of additional "hot spots" creates a high level of uncertainty in the level of implementation that

cities and counties can commit to during the next five year permit term. In tum, the uncertainty in implementation creates compliance uncertainty when compliance targets in the permit include assumptions regarding the rate of redevelopment and demolition.

Provision C.12 of the Tentative Order uses a framework that is a hybrid of two approaches, requiring: 1) BN1P implementation and 2) pollutant load reduction. The required BMPs are Green Infrastructure and managing PCBs-containing materials and wastes during building demolition activities. However, it appears that the primary intent is to require Permittees to demonstrate a total cumulative Bay Area-wide PCBs load reduction of 3 kg/year over the permit term. Our overarching concern is that Provision C.l2 continues to fall well short of providing Permittees with a clear and feasible pathway to attaining compliance with this load reduction requirement.

It is also important to note that the level of effort and associated resources required to implement Provision C.l2 as set forth in the Tentative Order is highly uncertain. Much of the cost of implementing PCBs control programs during the current permit term was offset by a grant from USEPA that will end in 2016. The availability of grant or other funding for implementing Provision C.l2 of the reissued permit is unknown. As a starting point, making all of the below recommended revisions would result in much greater certainty regarding the level of effort and associated resources that would be required to comply with Provisions C.l2, and create a much clearer pathway towards complying with the MRP.

C.12.a. – San Carlos #9 – SKM

C.12.a – Implement Control Measures to Achieve Load Reductions

The Tentative Order appears to require Permittees to reduce PCBs loads to the Bay by 3 kg/year by the end of the permit term. The approach includes developing an accounting system for Executive Officer approval early in the permit term that would form the basis for the load reductions credited to the various PCBs controls.

- Issue: There is a lack of a clear and feasible pathway for Permittees to attain compliance with the load reduction requirements. Most factors that would be key to meeting the criteria are uncertain and many are not within Permittee control (e.g., extent of source properties that will be found, building demolition rates, and redevelopment rates), making achievement of compliance uncertain.

  Requested Revision: Load reduction performance criteria should not be the point of compliance. Compliance should be based upon implementing PCBs control programs designed to achieve a load reduction target (such as a Numeric Action Level or similar mechanism for triggering requirements for additional action and reporting), based on an interim accounting method (see next section). The target would be informed by what the BMP programs could achieve, based on the accounting system, which would agreed upon upfront and incorporated into the permit.

C.12.f. – San Carlos #10 – SKM

C.12.f. Manage PCB-containing Materials and Wastes during Building Demolition

- Issue: The various potential problems associated with PCBs in building materials (i.e., water quality, human exposure at the site, and disposal) should be addressed holistically on a statewide or federal basis rather than focusing on water quality controls in the Bay Area only. Meeting the Tentative Order's three year timeframe to develop a program to manage PCBs in building materials and wastes during demolition would likely require administration at the local level. This inappropriate and rushed approach would result in highly inefficient use of scarce public funds and likely be ineffective at comprehensively addressing the problems. It with the State, USEPA, the building industry, and other stakeholders to attempt to develop a

cities and counties can commit to during the next five year permit term. In turn, the uncertainty in implementation creates compliance uncertainty when compliance targets in the permit include would also likely result in inconsistent programs across the Bay Area.

Recommended Solution: Allow at a minimum the entire permit term for Permittees to work with the State, USEPA, the building industry, and other stakeholders to attempt to develop a

comprehensive statewide or federal program analogous to current programs for asbestos and lead paint. Given the multiple environmental and public health issues in play, USEPA should play a large role in development of this program.

We look forward to continuing to work with you and your staff to resolve the issues described in this letter. Please contact Jay Walter, Public Works Director, if you have any questions or would like to further discuss any of our comments.

ns 

Mayor, City of San Carlos

CITY OF
SAN JOSE
Environmental Services Department
CAPITAL OF SILICON VALLEY
WATERSHED PROTECTION

July 10, 2015

Bruce Wolfe
Executive Officer
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

Subject: City of San Jose Comments on the Municipal Regional Stormwater Permit Tentative Order dated May 11, 2015

Dear Mr. Wolfe,

Thank you for the opportunity to comment on the Municipal Regional Stormwater Permit Tentative Order dated May 11,2015.

The City of San Jose is the tenth largest city in the United States, third largest in California, and the largest in the Bay Area, with a land area of 180 square miles and an estimated population of over 1 million. The City has approximately 31,000 storm drain inlets, 1,100 miles of storm drain lines, and
1,500 outfalls throughout its urban service area. The City has had a proactive stormwater management program in place since the first countywide municipal stormwater petmit was adopted in 1990. The City has actively been engaged in the development ofthe Municipal Regional Stormwater Permit Tentative Order, along with other MRP copermittees and Water Board staff.

The City's key concerns and issues with the Tentative Order are summarized in this letter and detailed comments are provided in Attachment A. The City's most significant concerns are with Provisions C.2. Municipal Operations, C.3 (New Development and Redevelopment), C.10 (Trash
Load Reduction), and C.lll C.12 (PCBs Controls/ Mercury Controls), and are highlighted

below. Municipal Operations (Provision C.2)

C.2.d.ii.(1) – San Jose #1 – SKM
Stormwater Pump Stations

Although the Water Board expressed its intent in the summary of Proposed Major Changes to the Tentative Order to delete prescriptive requirements for pump station monitoring, and delete repmting requirements, the new language is not possible to comply with without even more intensive monitoring of pump station discharges. Specifically, the language reads: "Implement corrective actions, such as continuous pumping at a low flow rate, aeration, or other appropriate methods to maintain dissolved oxygen (DO) concentrations of the discharge above 3 milligrams per liter (mg/L) *at all times* (emphasis added)." Previously, pump station monitoring was only required twice during the dry season. Although the Water Board has stated its intent to remove prescriptive monitoring requirements, there is no way to demonstrate that discharges meet these parameters "at all times" without intensive, expensive, and sometimes unreliable continuous DO monitoring. Moreover, monitoring pump station discharges in the wet season can be unsafe.

Requested Revision: Remove provision

C.2.d.ii(l) New and Redevelopment (Provision

C.3)

C.3.b.i. – San Jose #2 – SKM
LID Site Design
The City is concerned with the Tentative Order requirement that any regulated projects approved

before any C.3 requirements were in effect (prior to 2003) and have not yet begun construction by
the effective date of MRP 2.0, comply with the Low Impact Development (LID) treatment and sizing
requirements of MRP 2.0. The Tentative Order eliminates the ability of Permitees to grandfather older development projects, which was previously allowed in MRP 1.0. This represents a legal challenge. because it would require the City to impose new requirements on previously entitled development projects.

Applying new LID requirements to un-built or longer-term phased projects already approved under previous permit conditions is not possible. Approved building permits are ministerial acts which grant entitlements to the developer and thus restrict the ability of the City to impose any new requirements from that point forward. The phrase "has not begun construction" is ambiguous and, therefore, presents significant implications in the City's ability to comply. The requirement needs to align with the City's legal ability to impose changes in the project design.

Implementing this Tentative Order requirement would also have the following unfavorable impacts on the City:

- Cost of potential litigation brought by a developer that has received a building permit for a phase of development, that has effectively effectuated the project and requires no additional discretionary review;
- Significant cost to developers to retrofit projects to include stormwater control measures; and
- Time, cost, and training to implement a new process to ensure appropriate measures are in place per the grandfathering cause.

Requested Revision: Remove this requirement and allow un-built projects remain subject to LID treatment and sizing requirements that were in place at the time when the project was approved by the City.

C.3.e.ii.(4) – San Jose #3 – SKM

Gross Density

The Tentative Order adds a definition for "gross density" that conflicts with how the City has been calculating density credits for Special Projects and conflicts with past Water Board guidance on right-of-way and roadway projects. The definition includes right-of-ways and civic areas. This is inconsistent with the City's cutTent density credit calculation methodology, which excludes these areas. The Tentative Order approach would result in fewer credits for projects with these features
and prevent some valuable high density projects from qualifying for LID treatment reduction credits. Special Projects align with Smatt Growth concepts and provide holistic environmental benefits (stormwater quality, green-house gas emissions, and air quality) by reducing urban sprawl through high-density redevelopment, locating within walking/biking distance to public transit, and creating less "accessory" impervious areas associated with automobile-related uses. In order to achieve the goals of smart growth, Special Projects often must enhance infrastructure such as public right-of-ways, public parks and recreational areas, and pedestrian access through public plazas. Incorporation of these elements into the Gross Density definition will discourage projects from incorporating them into designs.

Additionally, right-of-ways and civic areas are currently captured under the stormwater treatment requirements for roadway projects. Adding these areas into the density credit calculation would result in "double-counting."

Requested Revision: Use Net Density to calculate Special Project density credits, or chang the definitions of Floor Area Ratio (FAR) and Gross Density such that they only include areas within the project boundary, and exclude public plazas, civic areas, and public right-of -ways.

C.3.h.ii.(7) – San Jose #4 – SKM

Operation and Maintenance of Stormwater Treatment Systems

Section C.3.h.ii (7) c requires that corrective actions for identified O&M problems with pervious pavement, treatment, and hydomodification systems be implemented within 30 days. The City's O&M Inspection Program developed an Enforcement Response Plan (ERP) that has been effectively implemented for just over one year (prior to petmit requirement). The City's ERP allows 90 days for corrective actions to be implemented, and more than 90 days for corrective actions when a site is actively working to resolve the issue. The new Tentative Order requirement for corrective actions to be implemented in 30 days does not allow enough time for identification of, communication with, and education of the property owner/operator. C.3 facilities are unique in that in the majority of cases responsibility is transferred several times before final ownership. For example, the developer transfers to property owner, the propetty owner transfers to homeowners association, and the homeowners association contracts with a third-patty maintenance company. Knowledge and understanding of C.3 treatment facilities and responsibilities to maintain are often not effectively conveyed throughout each transfer of ownership. This results in a longer process of identifying, contacting, and educating the property owner, allowing the property owner to arrange for maintenance work to be completed, and following up with are-inspection, all of which typically takes more than 30 days.

Requested Revision: Extend the proposed timeline for initial corrective actions from 30 days to 90 days and retain language allowing for more time when necessary and when actively working to resolve issues.

C.3.j.i.(1) – San Jose #5 – SKM

Green Infrastructure Planning and Implementation

The Tentative Order includes an increased emphasis on Green Infrastructure and requires Permittees to develop a Green Infrastructure Plan for incorporating low impact development drainage design into storm drain infrastructure on public and private lands. While the City supports the move to a holistic planning approach for green infrastructure and is already moving forward on a number of related efforts (e.g., Storm Sewer Master Plan), the City has concerns regarding the deadlines, level of effort, and potential costs associated with development and implementation of a Green Infrastructure Plan for the City.

The City requests that the Water Board reevaluate the timelines and make them more realistic and achievable. For example, the Tentative Order requires permittees to develop and obtain governing body approval of a framework within 12 months of the permit effective date. Given the size and complexity of the City and the extent of interdepartmental coordination required to develop a framework, the 12 month timeline is too short.

Requested Revision: Allow at least 18 months for permittees to complete these tasks and to require permittees to submit the framework no earlier than the second Annual Report due under the permit. Also, allow the full permit term for permittees to develop Green Infrastructure Plans and focus on implementation of the plans in the following permit.

C.3.j.i.(1)(c) – San Jose #6 – SKM

The City is uncomfortable with the Tentative Order requirement for Green Infrastructure Plans to include targets for the amount of impervious surface in the City to be retrofitted within 2, 7, 12, 27, 52 years of the permit effective date. It is unclear what level of project implementation is required,

and what the Water Board considers a compliant amount of retrofitted impervious surface.

Requested Revision: Align the milestone dates with the milestone dates in provisions C.11 and C.l2.

Trash Load Reduction (Provision C.lO)

The City has actively implemented trash management controls over the past 5 years and will continue implement strategies included in its Long-Term Trash Load Reduction Plan to achieve permit required trash load reduction goals. Significant elements of the City's trash reduction efforts include a vast array of strategies such as large trash capture devices, source control measures, active creek and shoreline cleanups, and robust programs to address direct discharge of trash into creeks.

C.10.b.iv. – San Jose #7 – SKM

Source Controls

The City appreciates that the Water Board included language in the Tentative Order to allow source control actions such as single use plastic bag bans and expanded polystyrene ordinances to be valued toward trash load reduction, and acknowledging the impmtance of these actions in reducing or eliminating the distribution of litter prone items. According to the BASMAA trash generation study, single-use plastic grocery bags and foam foodware comprises a substantial percentage by volume of trash and debris in stormdrains. Implementing both the Single-Use Carry-Out Bag and Foam Food Container Ordinances required significant investments of public resources. Observed results have proven the investment worthwhile in reducing these uniquely problematic and persistent kinds of litter prone items. Notably, since the inception of the ban on single use carryout bags in January 2012, the City has observed an estimated 71% reduction in plastic bags in creeks through trash characterization conducted at City hotspots. The City is disappointed, however, that the Tentative Order sets a cap of 5% for all source control actions combined. Establishing such a low cap significantly undervalues the direct impact of these actions on stormwater quality and the effort required to affect such a change.

Requested Revision: Revise the Tentative Order to increase the maximum for all source controls combined to at least 15%.

C.10.e.ii. – San Jose #8 – SKM

Direct Discharge Trash Control-Trash Load Reduction Offset Opportunities

The City is equally appreciative that the Tentative Order provides an option for trash load reduction offsets for direct discharge trash controls, however, the load reduction cap of 10% is simply too low. The City of San Jose is the 10th largest City in the United States and has one of the largest homeless

populations in the nation. The City's 130 miles of natural creeks in close proximity to urban areas make these riparian corridors attractive locations for homeless encampments. Homeless encampments generate substantial amounts of trash and are sources of direct discharges to creeks. The City has invested millions of dollars in developing a comprehensive Homeless Response Program to address homeless encampments throughout the City and improve water quality. Through the City's work, in-partnership with the Santa Clara Valley Water District, more than 1,200 tons of trash was removed from encampments established along the creeks in 2014. The City has also enhanced its strategies to implement more physical deterrents and enforcement presence/actions
when appropriate. The City spent almost $4 million dollars last year, with the program funded next fiscal year.

The Water Board has expressed supportive interest in local efforts to clean up direct discharges, including those from homeless encampments. The Water Board's support acknowledges that trash sources are not solely from the municipal separate storm sewer system (MS4) and that a balanced and prioritized approach to also manage direct discharge sources can, for justifiably select jurisdictions, provide equal if not greater water quality benefit than a strategy that simply focuses on
one source (i.e., MS4). The City concurs that the permit should include trash reduction credit for the portion of trash removed from somces of direct discharges, including homeless encampments. However, the maximum trash reduction offset should be more commensurate with the water quality benefit demonstrated by the relative amount of trash removed through an established and robust program.

Requested Revision: Increase the maximum offset for programs addressing direct discharges to at least 25%, and allow for post-2016 submittal of plans to control direct discharges that justify a requested offset percentage. These changes would better recognize the value of and more closely equate to the water quality benefits of direct discharge trash control programs.

C.10.e.i. – San Jose #9 – SKM

Creek and Shoreline Cleanups Offsets

The City views Creek and Shoreline Cleanups as important trash reduction activities that promote community involvement, create awareness of trash issues, and improve water quality. The City has been engaged in and has supported a variety of community creek cleanups including National River Cleanup Day, Coastal Cleanup Day, and the Great American Litter Pick up. Beyond that, the City has provided in-kind support to community groups dedicated to ongoing creek cleanup efforts, such as the Keep Coyote Creek Beautiful and Friends of Los Gatos Creeks. Last year, these two groups alone removed 53 tons of trash from local waterways.

The requirement for a minimum cleanup frequency of twice per year at each site is too constraining. The *City* and community groups may choose to cleanup more sites once per year, rather than fewer twice per year. The point is to remove trash from creek and shorelines, not how many times it is removed at a specific site. Allow permittees the flexibility to determine how to most effectively direct limited resources.

Requested Revision: For reasons similar to those noted in the section above, the City requests that the Water Board increase the maximum offset for creek and shoreline cleanups to at least 10, and remove the requirement for a site to be cleaned at least twice per year before claiming an offset.

C.10.a.i. – San Jose #10 – SKM

Trash Reduction Requirement Schedule

The Tentative Order contains the existing compliance target of 70% by July 2017. Trash reductions become increasingly more challenging as we move toward the goal of "no adverse impacts." For example, as the City seeks to install additional HDS units, siting and construction becomes more complex, involving more work with utilities and more difficulty ensuring the catchment areas align with high and moderate trash generation areas. As currently written, the Tentative Order reduces the amount of reduction value that

the City may claim toward overall trash reduction progress for source control and direct discharge programs, making these compliance milestones increasingly challenging.

Requested Revision: Extend the next regulatory milestone date from July 2017 to at least July 2018.

C.10.a.ii.b. – San Jose #11 – SKM

Trash Generation Management (Private Drainage Area)

The City is concerned regarding the requirement to map and assess all private drainages 5,000 square feet or greater (in very high, high, and moderately high trash generation areas), determine the level of trash present in these areas,'and ensure that no further action are needed. The mapping effort alone would be a significant undertaking and does not appear to provide any net trash reduction benefit. Furthermore, it is unlikely that the scale of eff01t prescribed will be achievable in the required timeframe. The City's IND program already covers many significant industrial sites with large drainage areas and works with propetty owners to address trash management issues that are observed.

Requested Revision: Remove this requirement.

C.10.b.i.a. – San Jose #12 – SKM

Maintenance of Full-Trash Capture Systems

Finally, the City is concemed about the prescribed maintenance frequencies for full trash capture devices. They are not cost effective and it is unlikely that the scale of eff01t prescribed will be achievable given the cost. Rainfall levels and site specific conditions, such as urban canopy, would impact the necessary maintenance frequencies. The Tentative Order requires an increase in maintenance frequency if a full capture device is plugged or full of trash. It is important to note that full capture devices may plug for reasons, such as unusual debris types entering the storm system, that are one time occm ·ences and not maintenance frequency dependent. It may not be operationally effective to change maintenance frequency without analysis of the event circumstances. The proposed maintenance frequencies are not cost effective and it is unlikely that the scale of eff01t prescribed will be achievable given the cost.

Tailoring maintenance programs to maintenance needs of specific devices is a better way to ensure adequate maintenance of these devices into the future.

Requested Revision: Allow permittees to develop and implement permitee-specific maintenance programs to achieve and maintain full capture criteria.

PCBs and Mercury Controls (Provisions C.11 & C.12)

· The City understands that the cun·ent Bay-wide TMDL load reduction requirement for stormwater is 90%. Current proposed control measures include, but are not limited to: additional street sweeping, inlet cleaning, suspect business referral to the Water Board, and ordinances to control the release of PCBs from demolition and renovation activities.

C.12.f.ii. – San Jose #13 – SKM

PCBs-Containing Building Materials and Wastes During Building Demolition

The Tentative Order's three year timeframe to develop a program to manage PCBs in building materials and wastes during demolition of applicable structures would likely require administration at the local level. The City is very concerned that this approach represents an inefficient use of public funds and an ineffective means to comprehensively address the problem. It would also likely result in inconsistent programs across the Bay Area. The City strongly believes that managing PCBs in demolition projects should be addressed on a statewide or federal basis, consistent with similar

programs (e.g., lead-based paint, asbestos).

Requested Revision: Allow, at a minimum, the entire permit term for permittees to work with the State, USEPA, building industry, and other stakeholders to develop a comprehensive statewide or federal program analogous to current programs for asbestos and lead paint.

C.12.a. – San Jose #14 – SKM

MRP Load Reduction Petformance Criteria

Load Reduction Perfmmance Criteria in Table 12.1 of the Tentative Order are based on an assumption that PCBs loads are related to population, not the actual availability of controllable sources of PCBs. The City is also very concerned that the Tentative Order requires implementation of sufficient control measures to achieve county-specific load reduction perfmmance criteria shown in Table 12.1. It then contradicts this by saying that all permittees will be in compliance with the load reduction performance criteria as long as the total load reductions for the entire area covered by this permit are achieved. Moreover, uncettainties and assumptions in the accounting methodology in the fact sheet do not allow for a clear path to compliance.

Stormwater PCBs loads and required reductions were originally assigned based on population. Through study during the previous permit term, PCBs are distributed according to land use factors not necessarily associated with population. However, the Tentative Order load reduction requirements are still based on population. Moreover, it is unclear that the prescribed load reductions are achievable in the timeframe set forth in the administrative draft. The Water Board must establish a clear path to compliance that provides meaningful and achievable reduction of PCBs loads to the Bay during the permit term, and to address shortcomings in the original loading estimates and allocations.

C.12.c. – San Jose #15 – SKM

The City is concerned about the Tentative Order requirements to plan and implement green infrastructure to reduce PCBs loads. Although green infrastructure projects are currently underway in San Jose, it is unclear whether additional projects can be funded and sited appropriately to achieve reduction goals

Requested Revision: Remove language creating County-specific load reduction criteria and revise language to state that permittees will be in compliance based on the stipulated load reduction benefits of proposed control measures, and acknowledge the possibility of stipulating further benefits from activities not listed in the fact sheet.

General – Reporting – San Jose #16 – SKM

General Comments

Several provisions of the Tentative Order require the City to make a mid-year change, assuming an effective date of December 1, 2015, to the way we currently collect and/or track data. For example, C.3.h.v requires tracking of inspections by the number of sites as opposed to the current practice of tracking by the number of treatment facilities. Such modifications will make it challenging for the City to plan and conduct inspections during already initiated FY 15-16. It will also be difficult to report on data tracked one way, under current MRP requirements, for the first half of the fiscal year and tracked another way, under MRP 2.0 requirements, for the second half of the fiscal year. Some data tracking changes will require lead time for staff training, tracking tool development, and database programming prior to implementation. The City requests that the Tentative Order establish an effective date of July 1, 2016 for all such tracking requirement changes with an associated first repm1ing of the newly required data in the 2017 Annual Report. This will allow six months following permit approval for implementation and eliminate the need to change tracking methods

mid-year.

Conclusion

The City remains an active steward of the environment, local creeks, and the San Francisco Bay, and acknowledges the time and effort of Water Board Staff invested in the development of the Tentative Order. We appreciate your consideration of our comments and look forward to engaging in the next steps to produce a successful MRP 2.0.

f'kERRIE ROMANOW
Director, Environmental Service

Attachment A: City of San Jose – Detailed Comments on Tentative Order

Attachment A: City of San Jose Detailed Comments on the Municipal Regional Permit Tentative Order

Master Provision#	Detailed Provision	Comment	Requested Revision
San Jose #17			
C.2	C.2.d.ii(1) Stormwater Pump Stations	Although the Water Board has removed explicit requirements for monitoring pump station discharges, they have left in and strengthened the language regarding dissolved oxygen in discharges. There is no way to know whether the discharges are above 3 mg/L "at all times" without continuous monitoring, which is far more burdensome than the previous language.	Remove specific language regarding the 3.0 mg/L dissolved oxygen trigger. Alternatively, revise language to read,"Upon becoming aware that a pump station discharge dissolved oxygen concentration is below 3.0 mg/L, implement corrective actions such as...and confirm with follow up testing to verify effectiveness".
San Jose #18			
C.3	C.3.b.i-Regulated Projects	Provision C.3.b requires that any Regulated Project that was approved before any C.3 requirements were in effect (i.e., does not have a stormwater control plan) and has not begun construction before MRP 2.0 takes effect must comply with provisions C.3.c and C.3.d (LID treatment and sizing requirements). The problem with requiring new LID requirements to apply to unbuilt projects approved under previous permit conditions lies with the City's ability or inability to add new requirements. Issuance of building permits are ministerial acts. The City does not have the ability to impose new requirements at that time. The requirement needs to align with the City's legal ability to impose changes in the project design.	Delete this requirement.
San Jose #19			
C.3	C.3.b.i-Joint Stormwater Treatment Facility	This section poses a problem for the City because it requires that the stormwater management facility be built by completion of construction of the first regulated project. Practically, this is tremendously difficult because a stormwater treatment facility that covers more than one project requires funding from	Allow the timeline for final construction of any facility that serves two or more projects be three years after the first regulated project is completed. The provision should also allow the regulated projects that are completed prior to completion of the stormwater treatment to be

all projects. It is difficult to ask the first regulated project to cover the capital costs for a treatment

allowed to use temporary treatment f<;!cilities or a_!empo!ary ccmne ction to the storm ater

Master Provision#	Detailed Provision	Comment	Requested Revision
		system that will serve several projects	system.
San Jose #20			
C.3	C.3.c.i.(2)(b)- LID Site Design and Stormwater Treatment Requirements	Permittees are required to collectively develop and adopt design specifications for pervious pavement systems, subject to Executive Officer approval. Countywide program guidance manuals already include pervious pavement specifications. This requirement duplicates work that already exists and has been and continues to be implemented by Co-permittees. In addition, the requirement places an undue new level of work on the permittees, and a potential new level of uncertainty without any factual basis to support the increased need contained in the fact sheet.	Delete the requirement.
San Jose #21			
C.3	C.3.e.ii- Footnote 7- Special Projects - Gross Density	The newly added definition of gross density conflicts with how the City has been calculating density credits for Special Projects and with past Water Board guidance on right-of-way and roadway projects. Specifically, including public right-of-ways and civic areas is not consistent with current density credit calculations and would reduce the amount of credit for a project that has these types of areas. The definition proposed in the Tentative Order is counter to professional land use planning standards, and should be revised to exclude public rights-of-way. Using gross density as defined in the Tentative Order will result in a lower density value that may prevent some valuable high density projects from qualifying for LID treatment reduction credits.	Use Net Density to calculate Special Project density credits or change the definition of Gross Density to include only areas within the project boundary and exclude public areas including the right-of-way.
San Jose #22			
C.3	C.3.h.ii.(6)(b)- Operation	In the Tentative Order changes were made to allow	Delete language requiring inspection of 20% of

and Maintenance of Stormwater Treatment	permittees to track inspections by the number of sites instead of numbers of treatment facilities, which was an improvement, but inspection of at least 20% of the	sites per year. Allowing flexibility will enable the City to better manage inspections while accounting for staffing losses and other

Master Provision #	Detailed Provision	Comment	Requested Revision
	Systems	total number of Regulated Projects is required each year. Permittees have requested more flexibility around that number while still meeting the requirement of inspection of each site at least once every five years.	challenges.
San Jose #23 C.3	C.3.h.ii.(7)(c) Operation and Maintenance of Stormwater Treatment Systems - Enforcement Response Plan	C.3.h.ii.(7) contains requirements for O&M Enforcement Response Plans. Section (c) requires that corrective actions for identified O&M problems with pervious pavement, treatment, and hydromodification systems be implemented within 30 days of identification, and if more than 30 days are required, a rationale must be recorded in the Permittee's inspection tracking database. The San Jose O&M Inspection Program developed an Enforcement Response Plan (ERP) that has been effectively implemented for over a year (prior to permit requirement). The City's ERP allows 90 days for corrective actions to be implemented, and more than 90 days for corrective actions when a site is actively working to resolve an issue. The new Tentative Order requirement for corrective actions to be implemented in 30 days does not allow enough time for identification or communication with, and education of the property owner/operator. C.3 facilities are unique in that in the majority of cases responsibility is transferred several times before final ownership (e.g. developer transfers to owner who transfers to HOA who contracts maintenance). Knowledge and understanding of C.3 treatment facilities and responsibilities to maintain are often not effectively conveyed throughout each transfer of ownership. This	Allow 90 days for completion of permanent corrective actions and retain language allowing for more time when necessary and when the property owner is actively working to resolve outstanding issues.

Master Provision#	Detailed Provision	Comment	Requested Revision
		results in a longer process of identifying, contacting, and educating the property owner, allowing the property owner to arrange for maintenance work to be completed, and following up with a re-inspection, all of which typically takes more than 30 days.	
San Jose #24			
C.3	C.3.h.v. – Reporting	The change to track inspections by the number of sites instead of number of treatment/HM facilities midway through the fiscal year (assuming an effective date of December *1,* 2015) will make it challenging for the City to plan, conduct and report inspections during FY 15-16.	Establish an effective date of July *1,* 2016 for when permittees change from tracking inspections by number of treatment/HM facilities to tracking by number of Regulated Project sites.
San Jose #25			
C.3	C.3.j.- Green Infrastructure Planning and Implementation	The language in Provision C.3.j needs to be more consistent with the expectations in Provisions C.11 and C.12 for achieving PCB and mercury load reductions with Green Infrastructure. Discussions with Water Board staff on C.11 and C.12 have suggested that load reductions can be accomplished by private development and redevelopment, whereas C.3.j only refers to public retrofits.	Make language more consistent with the expectations in C.11 and C.12. Also make more explicit in C.3.j (as well as in C.11/12) that private development and redevelopment as well as public projects will count toward meeting impervious surface retrofit targets.
San Jose #26			
C.3	C.3.j.i.-Green Infrastructure Program Plan Development	Because developing a comprehensive Green Infrastructure (GI) Plan will take time and significant resources, and the timeframes in the Tentative Order for completion of the Plan are unrealistic. For example, the framework for the GI Plan has to be developed and approved by local governing bodies or city/county managers within one year of the Permit effective date. This is a very short timeframe given the	Provide 18 months to complete and obtain governing body approval of the green infrastructure plan framework. Provide the entire permit term to complete the GI Plan. Eliminate the 2-year deadline to complete prioritization, mapping, and begin implementation of planned/potential projects (before the GI Plan is completed), and include

effort required to coordinate and educate internal depe rtmer_1ts, educate upper level staffand elected these efforts in the GI Plan development period. Implementation should begin afterthe

Master Provision #	Detailed Provision	Comment	Requested Revision
		officials, prepare the framework, conduct resource planning, and accommodate lead times for bringing the framework to governing bodies. Additionally, the GI Plan must be completed and submitted with the 2019 Annual Report (3 ½ years from the expected Permit effective date). Completing a GI Plan will be a complex and time-intensive process which will require a great deal of interdepartmental coordination and resources.	GI Plan is completed.
San Jose #27			
C.3	C.3.j.ii. -Green Infrastructure Program Plan Development-Early Implementation	Provision C.3.j.ii requires early implementation of green infrastructure, focused on identifying and implementing public projects that have potential for green infrastructure measures (including LID treatment) within the permit term. It is unclear how compliance with this section will be determined. The process for review of planned capital projects needs to be more defined and objective, in order to avoid disagreements with Water Board staff as to what are "missed opportunities". There also needs to be the recognition that while it may be technically feasible to add LID features to a capital project, the funding for the additional features and the ongoing maintenance of the LID features may not be available.	Efforts during the MRP 2.0 term should focus on development of long-term Green Infrastructure Plans and opportunistic implementation of green infrastructure projects where feasible and where funding is available. Add the following language that would allow for consistent review of capital projects for GI opportunities, based on specified criteria: "Permittees shall review and analyze appropriate projects within the Permittee's capital improvement program, and for each project, assess the opportunities and associated costs of incorporating LID into the project. The analysis shall consider factors such as grading and drainage, pollutant loading associated with adjacent land uses, uses of available space with the project area, condition of existing infrastructure, opportunities to achieve multiple benefits such as providing aesthetic and recreational resources, and potential availability of incremental funding to support LID elements along with other relevant

Master Provision#	Detailed Provision	Comment	Requested Revision
			factors. Permittees will collectively evaluate and develop guidance on the criteria for determining practicability of incorporating green infrastructure measures into planned projects."
San Jose #28			
C.4	C.4.d.iii.(3)- Reporting Requirement	The Water Board changed the current reporting requirement from "number of violations resolved within 10 working days" to "number of enforcement actions resolved within 10 working days". Such a roll-up from violations to enforcement actions will require time and investment to re-program the City's enforcement database to provide such data. This would require database changes that would need to be completed by (the already past date of) July 1, 2015, to report out the newly required information in the 2015-2016 Annual Report. San Jose has historically tracked and reported at the violation level. As drafted, the Tentative Order would require the City to shift from reporting on the more specific "number of violations resolved "to the more general "number of enforcement actions resolved." We believe that tracking and reporting at the violation level is more aligned with the Water Board's intent to protect water quality because it gives the Water Board information of the types of problems observed by inspectors that could potentially or actually impact water quality, while reporting how effective the municipality is at correcting each and every violation; as opposed to enforcement actions, within 10 days.	Allow permittees the option to report data at the more informative and detailed violation level OR at the enforcement action level. If the Water Board does not provide the option above, allow permittees a transition time, once permit is approved, to make necessary database changes so we can efficiently plan for, track, and report the required information. Reporting new data beginning in FY 16-17 is more appropriate, providing until July 1, 2016 (6 months, if permit approved in December 2015} to make the necessary database changes.
San Jose #29			

C.4	C.4.d.ii.(3) - Inspections	Current reportil')g requirerr1ents include listing the	To be consistent with current requirements,

Master Provision#	Detailed Provision	Comment	Requested Revision
	(reporting)	"frequency and types/categories of violations observE:!d" and "types of violations noted by business category" therefore,the City has listed the number of actual and potential violations and the types of actual and potential violations noted by business category. This new section of the Tentative Order indicates the need to list "frequency and types of potential and actual discharges noted by business category. These are not the same thing.	change the language to read "frequency and types of discharges noted by business category."
San Jose #30			
C.S	C.S.a.- Legal Authority	New text was added to Provision C.S.a Legal Authority that requires permittees to have adequate legal authority to address illicit discharges including sewage.The new text provides an exception for those sewage-related discharges that are "already reported to the Water Board through the California Integrated Water Quality System Project." While we appreciate the attempt to exempt those illicit discharges reported to the Water Board consistent with requirements outside ofthe MRP,this exemption is misplaced and should be associated with the tracking and reporting of these discharges via the MRP, not having the legal authority to address these discharges.	Move the text "already reported to the Water Board through the California Integrated Water Quality System Project" from Provision C.S.a Legal Authority to the more appropriate provision - C.S.d.Tracking and Case Follow-up. Permittees should maintain the legal authority to address all sewage illicit discharges, but would like to exclude the requirement for tracking sanitary sewer overflows via their water quality spill and dumping complaint tracking and follow-up electronic database/tabular system required by the MRP if the data are already being reported through CIWQS. To address this issue,we recommend the following text be added to the provision: C.S.d.iTask Description- All incidents or discharges reported to the spill and dumping central contact point that might pose a threat to water quality shall be logged to track follow-up and response through problem resolution. The data collected shall be sufficient to demonstrate escalating responses for repeated problems and inter/intra-agency coordination,

Master Provision#	Detailed Provision	Comment	Requested Revision
			where appropriate. If data are tracked and reported to the Water Board under another permit (e.g.,SSOs reported according to State Board Order No. 2006-0003-DWQ) it is not necessary to track and report the incident according to this provision.
San Jose #31			
C.5	C.S.e. iii: Control of Mobile Sources (tracking reporting requirements)	Although Water Board has indicated that the Tentative Order contains no new requirements for Mobile Businesses,Tentative Order requires a level of reporting of FY 15-16 data (and FY 18-19) that will require the City to make changes to its environmental enforcement database by {the already past date of) July 1,2015 in order to track and report out on (e.g. number of inspections of mobile businesses, number/type of enforcement actions on mobile businesses).	Allow permittees a transition time,once permit is approved,to make necessary database and changes and be able to track and report the required information. Reporting new data in FY 16-17 is more appropriate, providing permittees until July 1,2016 {6 months,if permit approved in December 2015) to make the necessary database changes.
San Jose #32			
C.6	C.6.d.ii.(2)- Plan Approval Process	The current permit requires verification that a site has filed a Notice of In ent for permit coverage under the Construction General Permit (CGP) prior to approval and issuance of local grading permits. Requiring dev lopment projects to obtain coverage under the CGP before the City can issue grading permits could delay projects and/or raise project risk levels as a result of unnecessarily lengthening CGP coverage periods. Lengthening CGP coverage could result in additional annual fees. Determination of whether a developer/operator has "obtained coverage" under the CGP is the responsibility of the Water Board,not permittees.	Maintain the current permit requirement to require verification that a site has filed a Notice of Intent for permit coverage under the Construction General Permit in the Tentative Order.
San Jose #33			
C.6	C.6.e.ii {2) (b)- Frequency	The Tent'!tive Order provides new criteria (> 15%	Remove this provision to allow the City to

of Inspections (Hillside	grade; 5000 sq ft of disturbed area) for hillside Projects)	effectively use the flexibility of the current permit provisi()n_for HJgh Priorjty Sites to
	development sites that need to be assessed to	

Master Provision#	Detailed Provision	Comment	Requested Revision
		determine impact of having to conduct monthly CON inspections at such hillside projects. This new provision will add additional tracking and outreach work. The City does not currently track site slope through our Grading Permit Database or Inspection Tracking Database. Additionally, the implementation date coincides with the effective date of the permit. This does not allow any time to develop a tracking system or provide outreach. Reporting would only cover half a fiscal year. The City will require time to make database changes and inter-departmental process changes to track and report the required information based on the new criteria. All database changes would need to be completed by (the already past date of) July 1, 2015.	capture all appropriate construction projects with potential impacts to receiving waterbodies from erosive slopes. The City currently captures construction sites of sizes both above and below the proposed 5,000 SF threshold but does not track the slope. However, slope, in addition to the other High Priority factors, is included in the decision to classify a site as High Priority. If the provision is maintained in the permit, it is recommended that the 5,000 SF threshold is removed and the 15% slope is added to the current High Priority reference to slope. Additionally, the implementation date should be July 2016 to allow time to develop a trackiAg method and to reduce reporting inconsistencies.
San Jose #34			
C.6	C.6.e.iii.(2)(g) - Reporting	The text rl:!fers to the "number of violations". This is inconsistent with similar reporting requirements in Provision C.4., but consistent with the City's current practice. San Jose has historically tracked and reported at the violation level. We believe that tracking and reporting at the violation level is more aligned with the Water Board's intent to protect water quality because it gives the Water Board information of the types of problems observed by inspectors that !=Ould potentially or actually impact water quality while reporting how effective the municipality is at correcting each and every violation, as opposed to enforcement actions, within 10 days.	Allow permittees the option to report data at the more informative and detailed violation level OR at the enforcement action level. If the Water Board does not provide the option above, allow permittees a transition time, once permit is approved, to make necessary database changes so we can efficiently plan for, track, and report the required information. Reporting new data beginning in FY 16-17 is more appropriate, providing until July 1, 2016 .(6 months, if permit approved in December 2015) to make the necessary database changes.
San Jose #35			

C.10	C.IO.a.i – Schedule	The City recognizes trash as an important priority and	Extend the compliance ate for achieving 70%

Master Provision#	Detailed Provision	Comment	Requested Revision
		asserts that large scale efforts to control trash must move forward methodically, cost-effectively, and accompanied by adequate resources and time to implement in order to support success. Reductions become increasingly more challenging the closer the City moves towards the trash reduction goal of "no adverse impacts". This provision requires a 70% load reduction by 2017. This schedule is too rigorous and should be extended to allow formore time to develop/implement sust_?inable control measures. The reduction percentages may not be attainable in the timeframe proposed.	reduction to at least July 2018.
San Jose #36			
C.10	C.10.a.ii.b- Trash Generation Area Management (Private Drainage Areas)	The intent of mapping these drainages is unclear. Mapping would require a significant undertaking that would result in minimal trash reduction and water quality benefit. Ensuring that private drainages are at a "low" trash generation level does not require mapping. High priority areas can be identified by existing municipal inspection programs already in place. It is unlikely that the scale of effort prescribed will be achievable in the required timeframe.	Delete this requirement.
San Jose #37			
C.10	C.lO.a.iii – Mandatory Minimum Full Trash Capture Systems	Green Infrastructure (C.3 compliant) facilities have been constructed on properties over the last 10+ years. These facilities were designed consistent with the new and r development requirements and perform at a level similar to typical trash full capture systems. These systems have been designed to prevent flooding and effectively remove pollutants from stormwater. This provision of the Tentative	Remove the requirement for "screening" all Green Infrastructure treatment facilities installed and maintained consistent with provision C.3 and deem that these facilities are equivalent to full capture systems.

Order currently requires permittees to install a screen

Master Provision#	Detailed Provision	Comment	Requested Revision
		(Smm) to the overflow pipes of all Green Infrastructure facilities before these devices can be considered full capture systems. Screening the overflow pipes would be out of the scope of the City's authority, as nearly all treatment facilities are privately owned and maintained. Additionally, adding screens to existing facilities would have unknown effects to the performance of these systems and would likely increase the maintenance and flooding if retrofitted with screens. The requirements for the sizing and design of green infrastructure facilities are now well established. Requiring modifications to these designs for trash just doesn't make sense. The Water Board established provisions requiring these facilities based on their ability to remove pollutants attached to small particles less 0.1mi'n in size, but is now requiring modifications for trash items that are at least 20 times greater in size. Trash items are effectively removed by these facilities without modification.	
San Jose #38	C.10.b.i.a - Maintenance	Maintenance frequencies based on trash generation are inconsistent with the experience and knowledge of the City. The appropriate frequency of maintenance will be dependent on variations in rainfall levels and site specific conditions, such as urban canopy. Furthermore, full trash capture devices may plug for reasons, such as unusual debris types entering the storm system that are one time occurrences and not maintenance frequency dependent. The prescribed maintenance frequencies are not cost effective and it is unlikely that the scale of effort prescribed will be achievable given the cost. Also, it may not be	As an alternative to the specified arbitrary maintenance frequencies, require permittees to develop and implement permittee-specific maintenance programs to achieve and maintain full capture criteria. Require permittees to report on the implementation of their maintenance programs, adaptation of these programs, and any issues that need to be addressed. Tailoring maintenance programs to maintenance needs of specific devices is the better way to ensure adequate maintenance of these devices into the future.

Master Provision#	Detailed Provision	Comment	Requested Revision
		operationally efficient to change maintenance frequency without analysis of site and event circumstances when a full trash capture unit plugs. The prescribed maintenance requirements will discourage use of full trash capture devices.	
San Jose #39			
C.10	C.lO.b.i.b-Maintenance Records	Records and policies will need to be developed for large and small devices. The City is concerned that reporting on flooded devices may not be possible given the urgency associated with storm response.	Include language that acknowledges the challenges with data collection during urgent storm response scenarios and provides for alternative reporting requirements under these conditions.
San Jose #40			
C.10	C.10.b.ii.b-Visual Assessments of Outcomes Other Than Trash Management Actions	The referenced section (C.10.b.ii(v)) does not exist.	Add the referenced section or add language elsewhere to identify acceptable assessment methods. Include guidance for the referenced assessment method.
San Jose #41			
C.10	C.10.b.ii.b.iv-Visual Assessments of Outcomes Other Than Trash Management Actions	The City requests additional clarity on how Executive Officer approval can be obtained, including a timeframe within which the Executive Officer would provide a decision, and the ability to consider a proposal as accepted if no objection is received within that timeframe (e.g., within 30 days from submittal for consideration).	Delete the requirement for Executive Officer approval.
San Jose #42			
c.10	C.10.b.iv-Source Control	The City recognizes the most important actions that can be taken by permitees are those that eliminate the generation of litter prone items in perpetuity. The City's actions have made it a national leader for eliminating the sale or distribution of litter prone items by adopting a ban on single use carry out bags and expanded polystyrene foam food containers. These actions took significant political support, public	Increase the maximum reduction value for all source control actions combined to at least 15%. Supporting evidence would be required to claim reductions associated with source controls.

resources, and were done in partnership with environmental Non-Governmental Organizations (NGOs).

Master Provision#	Detailed Provision	Comment	Requested Revision
		The 5% maximum reduction for all source control actions is arbitrary and inconsistent with current knowledge of the percentage of trash in stormwater associated with specific litter-prone items associated with these source control actions. The programs implemented to address these litter prone items are effective and directly benefit stormwater quality. Data collected by the City indicates that the ban on single-use bags has resulted in a 71% reduction in bags found in waterways on average. Data collected by MRP permittees indicate that each individual source control action reduces between 5 and 10% of the trash found in MS4s on average. These reductions are likely not observed by visual assessment protocols because the qualitative assessments are only precise enough to detect reductions greater than 25%. Therefore, without a specific reduction value for source controls, reductions associated with these actions may never be valued.	
San Jose #43			
C.10	C.10.b.v – Receiving Water Observations	Requiring receiving water observations to be conducted downstream from trash generation areas converted to "low" trash generation gives the appearance that these observations could be used to judge compliance with reductions associated with municipal stormwater. This is confusing because the process for judging compliance with stormwater reductions is outlined elsewhere in the Tentative Order.	Revise the language to state that the purpose of receiving water observations is "...to evaluate the level of trash present in receiving waters over time, and to the extent possible, determine whether there are ongoing sources outside of the MS4 that are causing or contributing to adverse trash impacts in the receiving waters."

Master Provision#	Detailed Provision	Comment	Requested Revision
San Jose #44			
.10	C.10.e.i – Creek and Shoreline Cleanups	The City views Creek and Shoreline Cleanups as important trash reduction activities that promote community involvement, create awareness of trash issues, and provide tangible water quality benefits. The City has been engaged in and has supported a variety of community creek cleanups. While the City appreciates the inclusion of load reduction benefits associated with creek and shoreline cleanups, the 5% maximum offset for these important actions is too small and inconsistent with the environmental benefit. Additionally, the requirement for a minimum cleanup frequency of 2 times per year at each specific site creates inflexibility and is too constraining. Some permittees may choose to cleanup many sites 1x/year rather than a small number of sites 2 times per year. It is most important that trash is being removed from creeks and shorelines, not how many times at a specific site.	Revise the Tentative Order to increase the maximum offset for creek and shoreline cleanups to at least 10%; and remove the requirement that a site be cleaned up at least 2 times per year before claiming an offset.
San Jose #45			
C.10	C.10.e.ii - Direct Trash Discharge Controls	The City appreciates the inclusion of load reduction benefits associated with direct dumping (e.g., homeless encampment cleanups), however, the 10% maximum offset for these important programs significantly undervalues the tangible water quality benefits they provide. Jurisdictions with greater trash impacted communities should be given the opportunity to prioritize resources to achieve the greatest water quality benefit.	Increase the maximum offset for robust programs addressing direct discharges from 10% to at least 25%.

Master Provision#	Detailed Provision	Comment	Requested Revision
San Jose #46 C.lO	C.lO.f- Reporting-	Compliance with NPDES permits is determined by the Water Board. Provision C10.f.v.b requires permittees to "submit a report of non-compliance" if it cannot demonstrate the attainment of 70% reduction, which therefore assumes that compliance determinations are made by the permittee.	Revise this provision to require that a permittee that cannot demonstrate a 70% reduction, "submit a report and updated Long-term Trash Load Reduction Plan that describes actions to comply with the mandatory deadlines in a timely manner..."
San Jose #47 C.12	C.12.a- Implement Control Measures to Achieve Load Reductions	There is no clear and feasible pathway for Permittees to attain compliance with the load reduction requirements. Most factors that would be key to meeting the criteria are uncertain and more importantly, many are not within the permittees control (e.g., extent of source properties that will be found, building demolition rates, and redevelopment rates), making compliance uncertain.	Load reduction performance criteria should not be the point of compliance. Compliance should be based upon implementing PCBs control programs designed to achieve a load reduction target (such as a Numeric Action Level or similar mechanism for triggering requirements for additional action and reporting) and based on an interim accounting method (see next section). The target would be informed by what the BMP programs could achieve, based on the accounting system, which would agreed upon upfront and incorporated into the permit.
San Jose #48 C.12	Provision C.12.a.iii.- Implement Control Measures to Achieve PCBs Load Reductions (Reporting)	Several reporting requirements in Provision C.12.a. are unrealistic. Provision C.12.a.iii.(1}- February 1, 2016 report providing "a list of watersheds (or portions therein) where PCBs control measures are currently being implemented- and those in which control measures will be implemented (C.12.a.ii.(1}} during the term of this permit as well as the monitoring data and other information used to select the watersheds." Provision C.12.a.iii.(2}- 2016 Annual Report providing "the specific control measures (C.12.a.ii.(2}} that are currently being implemented and those that will be	Extend the deadlines for the referenced reports to the 2017 Annual Report

Master Provision#	Detailed Provision	Comment	Requested Revision
		il'!"plemented in watersheds identified under C.12.a.iii.(l}and an implementation schedule (C.I2.a.ii.(3)) for these control measures. This report shall include:.... [scope, start dates, progress milestones, schedules, roles and responsibilities of Permittees, etc..]....".	
San Jose #49 C.12	Provision C.12.a.iii.- Implement Control Measures to Achieve PCBs Load Reductions	Significant efforts have been made to-date by permittees and through the RMP to better understand the distribution of PCBs and mercury in watersheds. PCB hot spots are generally associated with older (pre-1980} industrial areas and other areas where PCBs were used, transported, or managed during the early to mid 20th century. Reductions in the permit are assigned to County Stormwater Programs based on population. PCBs are not directly associated with population. Rather, they are associated with areas where they were used, transported or otherwise managed. Al hough the population of Santa Clara County is equal to or larger than the other three main counties included in the MRP, based on over a thousand sediment and water samples analyzed Baywide, PCBs are not as abundant in the Santa Clara Valley as some other areas. Low levels in the Southern Bay Area are likely due to the limited amount of older industrial areas and the fact that development largely occurred after PCBs were phased-out of production.	If a load reduction target (as a Numeric Action Level) is retained in the permit, Water Board staff should use a more appropriate metric than population to allocate load reduction responsibilities, such as the amount of older industrial areas urrently present in each County. This revision would more closely correlate with our current understanding of the distribution of these contaminants in watersheds, more equitably distribute compliance responsibility among different Counties and Permittees, and potentially make stormwater load allocations more achievable by targeting actions where PCBs are most abundant.
San Jose #50 C.12 out.	C.12.b. Assess Load Include in the interim accounting method values for all parameters to allow for scrutiny during the public permit review process, given	Reductions from Stormwater	Values for certain key accounting parameters for managing PCBs-containing materials and wastes during buil(iing demolition activities were left

the uncertainty in these values. It is especially

Master Provision#	Detailed Provision	Comment	Requested Revision
			important to include values for all parameters associated with managing PCBs-containing materials and wastes during building demolition activities, including the fraction of PCBs mass in a building that enters the MS4 during demolition in the absence of enhanced controls, which is particularly uncertain. Stormwater programs can also provide similar values for mercury to include in the fact sheet.
San Jose #51			
C.12	C.12.b.iii.(1) Assess Load Reductions from Stormwater (Reporting)	Requirement to formally submit load reduction assessment methodology early in the permit term for Executive Officer approval creates uncertainty in the load reduction benefit for each PCBs control program.	Omit the requirement to submit load reduction accounting method early in the permit term. Instead, the interim accounting method should be finalized, incorporated into the permit, and then used to calculate PCBs load reductions during permittee annual reporting.
San Jose #52			
C.12	C.12.b. Assess Load Reductions from Stormwater	Water Board staff has acknowledged that load reduction performance criteria are not numeric effluent limits. This should be made clear in the permit. In addition, further clarity is needed regarding the legal definition of the performance criteria and implications with regard to enforcement and potential third party lawsuits.	PCB load reduction performance criteria should be in the form of Numeric Action Levels or a similar mechanism for triggering requirements for additional action and reporting. In addition, the permit should include contingency language that would allow for achieving compliance if a good-faith demonstration of efforts and actions by permittees consistent with permit requirements falls short of achieving the load reduction performance criteria.
San Jose #53			
C.12	C.12.b.iii.(1) Assess Load Reductions from Stormwater (Reporting)	Provision C.12.b.iii requires that permittees submit permittee-specific proportioos of loareduction responsibilities and supporting data to the Water Board by April 1, 2016-four months after the	Delete requirement to develop and submit permittee-specific proportions of load reduction responsibilities.

Master Provision#	Detailed Provision	Comment	Requested Revision
		effective date ofthe permit. Although permittees and the RMP have spent considerable time and resources	

Master Provision#	Detailed Provision	Comment	Requested Revision
		towards identifying PCB hot spots and watersheds producing greater levels of PCBs to the Bay, data have not been collected at a level to which proportions of load reduction responsibilities could confidently be assigned to permittees. Furthermore, assigning permittee-specific responsibilities with high levels of uncertainty upon which compliance could be based is not good public policy and could inadvertently unduly place responsibi'lities upon certain permittees requiring the spending of public resources towards fictitious goals not based in reality.	
San Jose #54			
C.12	C.12.c-Plan and Implement Green Infrastructure to Reduce PCBs Loads	This provision of the Tentative Order requires permittees to implement Green Infrastructure projects during the term of the permit to achieve PCBs load reductions of 120 g/year over the final three years of the permit term. Additionally, permittees are required to prepare a reasonable assurance analysis to demonstrate quantitatively that PCB load reductions of at least 3 kg/yr throughout the Permit area will be achieved by 2040 through implementation of Green Infrastructure plans required by Provision C.3.j. It is unnecessary to include performance criteria for PCBs load reductions through implementation of Glover the reissued permit term. PCBs load reductions will not be the driver for green infrastructure implementation during the reissued permit term. Regional Water Board staff has noted that based on extrapolation of data from the current permit term, the proposed metrics should be met via redevelopment in old industrial areas. Thus the proposed criteria would not influence GI	Delete provision C.12.c.

Master Provision#	Detailed Provision	Comment	Requested Revision
		implementat_ion during the reissued permit term and meeting them would instead be dependent upon an activity that is not under permittee" s control. While we expect to learn valuable lessons via opportunistic early implementation of GI retrofit projects through Provision C.3.j.ii,the pollutant load reductions associated with these retrofits implemented over MRP 2.0 is anticipated to be relatively small.	
San Jose #55			
C.12	C.I2.c-Plan and Implement Green Infrastructure to Reduce PCBs Loads	It does not make sense to prejudge that PCBs load reductions of at least 3 kg/yr throughout the Permit area should be achieved by 2040 through implementation of Green Infrastructure plans. The actual load reductions that permittees expect to achieve via Green Infrastructure will be determined during the planning and reasonable assurance analysis required by Provision C.12.d.,as part of planning for achieving the overall PCBs TMDL allocations.	Delete provision C.I2.c.
San Jose #56			
C.12	C.12.f-PCB Containing Materials and Wastes During Building Demolition	Provision C.I2.f requires development of a program to manage PCBs in building materials and wastes during demolition. Given the large standing stock of PCBs known to be present in certain buildings in the Bay Area,there could potentially be significant benefits to implementing the proposed control program. However, we are not e ware that any data exist regarding the amount of PCBs-containing materials that are released to the ground during demolition and then mobilized into the MS4 by urban runoff,making it challenging to project with any certainty the actual water quality benefit of the proposed control	Allow at a minimum the entire permit term for permittees to work with the State,USEPA, the building industry,and other stakeholders to attempt to develop a comprehensive statewide or federal program analogous to current programs for asbestos and lead paint. Given the multiple environmental and public health issues in play, USEPA should play a large role in development of this program.

Master Provision#	Detailed Provision	Comment	Requested Revision
		program. Cost-effectiveness relative to other PCBs	

Master Provision#	Detailed Provision	Comment	Requested Revision
		controls is also highly uncertain at this time. The various potential problems associated with PCBs in building materials *(i.e.,* water quality, human exposure at the site, and disposal) should be addressed holistically on a statewide or federal basis rather than focusing on water quality controls in the Bay Area only. Meeting the Tentative Order's three year tim frame to develop a program to manage PCBs in building materials and wastes during demolition would likely require administration at the local level. This inappropriate and rushed approach would result in highly inefficient use of scarce public funds and likely be ineffective at comprehensively addressing the problems. It would also likely result in inconsistent programs across the Bay Area.	
San Jose #57 C.IS	C.IS.b- Conditionally Exempted Non-Stormwater Discharges	This omission of previously covered discharges forces municipal water purveyors to gain coverage under the newly developed Statewide General Permit. This requires another permit fee and separate reporting requirements, increasing the amount of regulatory overhead for both the State and affected municipalities.	Insert provision C.IS.b.iii from Order R2-2009-*0074*, with monitoring requirements from the statewide permit.

CITYOF
SANJOSE
CAPfil\L OF SILICON VALLEY

Office if the City Attorney
RICHARD DOYLE, CITY ATIORNEY

LEAH S. GOLDBERG Sr.
Deputy City Attorney Direct
Line: (408) 535-1901

July 10, 2015

VIA ELECTRONIC MAIL AND** U.S. **MAIL

Mr. Bruce Wolfe
Executive Officer
California Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA. 94162
rnrp.reissuance@waterboards.ca.gov

Re: San Jose Legal Comments to Tentative Order
Municipal Regional Stormwater Permit 2.0/NPDES Permit
No. CAS612008

Dear Mr. Wolfe:

These legal comments on the Tentative Order for NPDES Permit No. CAS612008 dated May 11, 2015, are submitted on behalf of the City of San Jose. As you know, the City of San Jose is one of the Santa Clara Valley Urban Runoff Pollution Prevention Program ("SCVURPPP") co-permittees that would be covered by the Municipal Regional Permit ("MRP"), and is the largest city among the SCVURPP co-permittees. These legal comments supplement the technical comments on the Tentative Order which are being submitted under separate cover by the City's Environmental Services Department on behalf of the City departments that will be tasked with implementing and reporting compliance with the Municipal Regional Stormwater Permit.

In addition to this brief summary of San Jose's specific legal comments, we support and incorporate by reference herein the legal comments submitted by Robert Falk of Morrison & Foerster for SCVURPPP dated July 9, 2015.

San Jose has several legal objections to the Tentative Order that are common to most of the provisions identified in our technical comments. These legal objections and the most significant provisions affected by the objections are addressed below as "General

Legal Comments." In addition, we have additional legal objections which affect a fewer number of the provisions; and these are identified below as "Specific Legal Comments."

General Legal Comments

General – San Jose Legal #1 – STL

There is Insufficient Evidence in the Record Demonstrating That the Provisions Are Practicable or Necessary to Protect Water Quality.

We do not believe that the record demonstrates that many of the provisions identified in the City's technical comments meet either the "nexus" requirement that is required under the Porter-Cologne Act (Cal. Water Code §§13241 and 13263) or the maximum extent practicable ("MEP") standard, which is the applicable statutory standard governing the substance of permits regulating municipal storrnwater discharges under the Clean Water Act ("CWA"). Many of the provisions referenced in the City's technical comments are deficient under these standards. Of special concern are provisions that are costly or will increase workload or with no demonstrable water quality benefit, such as Provisions C.2 and C.3.

General – San Jose Legal #2 – STL

The Provisions Impermissibly Specify The Manner of Performance.

The Porter-Cologne Act specifically prohibits the Board from specifying the "design, location, type of construction, or particular manner in which compliance may be had ...." Cal. Water Code §13360. Most of the provisions in the Tentative Order violate this prohibition by prescribing, sometimes in minute detail, how the City should conduct municipal operations or operate local programs, or even what ordinances must be adopted by the City Council. The overly prescriptive nature of the provisions related to exempted and conditionally exempted and provisions which do not sufficiently allow for Adaptive Management discharges [Provisions C.3, C.5, C.6, C.9 and C.15].

General – San Jose Legal #3 – STL

The Provisions Constitute an Unfunded Mandate.

The legal basis for the City's unfunded mandate objection, including an analysis of why many of the provisions included in the City's technical comments go beyond the requirements of the federal CWA, is set forth in Mr. Falk's comment letter.

General – San Jose Legal #4 – STL

The Water Board Has Failed to Sufficiently Consider the Economic Impacts of the Provisions.

For the provisions in the Tentative Order that go beyond requirements of the federal CWA, the Water Board is required to conduct an analysis of economic impacts and burdens pursuant to sections 13241 and 13263 of the Porter-Cologne Act. See *City of Burbank v. State Water Resources Control Board,* 35 Cal. 4th 613 (2005). Although the Fact Sheet (Attachment A to the Tentative Order) purports to contain an economic analysis, the studies cited are over 10 years old and do not address the requirements of this Tentative Order. Moreover, the Fact Sheet contains no analysis of the extent to which the programs included in those studies, which are primarily Southern California based, are comparable to the requirements in this Tentative Order. As indicated in more detail in the City's technical comments, specific provisions that are of particular economic concern to San Jose include: Provisions C.3, C.10, C.11 and C.12.

General – San Jose Legal #5 – STL

Issuance of the Tentative Order Is Subject to CEQA.

The California Environmental Quality Act (CEQA) applies to permits issued by the Water Board to the extent the permit contains provisions that are not required under the federal CWA. *City of Arcadia v. State Board,* 135 Cal. App. 4th 1392 (2006). The Tentative Order requirements exceed the CWA Mandates as Mr. Falk aptly stated. The need for a CEQA analysis is particularly relevant for provisions which specify the manner in which the permittees can and cannot construct public improvements and those which require the permittees to implement specific public improvement projects.

Specific Legal Comments

General – San Jose Legal #6 – STL

Some Provisions Exceed the Water Board's Statutory Authority and Impermissibly Impinge on Local Land Use Authority.

As a state agency, the Water Board only has the regulatory authority delegated to it by statute. The scope of this delegated authority does not include jurisdiction over local land uses decisions under state or federal law. Provision C.3 of the Tentative Order contains numerous instances where the Water Board is exceeding its statutory authority, with Provision C.3.b.i being of specific concern as indicated in the City's technical comments.

General – San Jose Legal #7 – STL

Some Provisions Are Outside the Scope of the Board's Permitting Authority for the City's Storm Sewer.

The Water Board is also limited in this proceeding to dealing with municipal storm water discharges. There are several provisions in the Tentative Order that attempt to regulate activities simply on the basis of impact on water quality, even though there is no demonstrated connection between these activities and the permittees' storm sewer

systems, including Provisions C. 5, C. 6, C. 9 and C.12.

Moreover, the Tentative Order exceeds its permitting authority by mandating in C.9. that the permittees lobby EPA with respect to its authority under the Federal Insecticide, Fungicide, and Rodenticide Act.

CONCLUSION

We appreciate the opportunity to submit these legal comments on the May 11, 2015 Tentative Order and look forward to your thoughtful consideration of both the legal and substantive issues that San Jose has raised in this proceeding to date.

Sincerely yours,

RICHARD DOYLE, City Attorney

By: .t:-1 id H'-:;:-Sl th+-=LD:-::(:t:=:ER:::::ftr:.::r------
Sr. Deputy City Attorney

LSG/lsg

cc: via electronic mail dbowyer@waterboards.ca.gov

COUNTY OF SAN MATEO
COUNTY MANAGER'S OFFICE

John L Maltbie
County Manager/
Clerk of the Board

County Government Center
400 County Center, 1st Floor
Redwood City, CA 94063
650-363-4121 T
650-363-1916 F
www.smcgov.org

July 10, 2015

Mr. Bruce Wolfe
Executive Officer
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

Subject: Comments on the Tentative Order for the Reissued NPDES Stormwater Municipal Regional Permit

Dear Mr. Wolfe:

The County of San Mateo (County) appreciates this opportunity to comment on the Tentative Order for the reissued NPDES stormwater municipal regional permit ("MRP 2.0") that was recently released by the San Francisco Bay Regional Water Quality Control Board (Regional Water Board) staff. The County supports the intent of the MRP to protect water quality; however, we foresee challenges in implementing and executing the Tentative Order within the proposed time frames. The County would like to emphasize our highest priority areas of concern, which are Provisions C.3 (New Development and Redevelopment, especially the Green Infrastructure provision) C.ll/12 (Mercury and PCBs Controls), and C.14 (City of Pacifica and San Mateo County Fecal Indicator Bacteria Controls).

C.14. – San Mateo County #1 – SKM

Specific to Provision C.14, the County requests consistency between the permit, the San Pedro Creek and Pacifica State Beach Bacteria TMDL Best Management Practices Implementation Plan and Monitoring Plan, and the Basin Plan Amendment.

General – Hope to illuminate County's constraints and provide recommendations resulting in in further revisions – San Mateo County #2 – SKM

While we generally agree with the overall goal of the revised MRP, our intent for these comments is to illuminate the County's constraints and provide recommendations to the permit that will result in additional permit revisions to create a practical and effective permit. For each priority issue that we identified, we provide a recommended revision to the Tentative Order.

For detailed comments on other sections of the permit, please refer to the comment letter submitted separately by the San Mateo Countywide Clean Water Program (SMCWPPP).

C.3 -NEW DEVELOPMENT AND REDEVELOPMENT

C.3.h.ii.(6) - San Mateo County #3 – SKM

C.a.h. – Operation and Maintenance of Stormwater Treatment Systems

- Remove burden of municipal staff of inspections: The County recommends removing the requirement of municipal staff to inspect pervious paving systems greater than/equal to 3,000 sq. ft. The added language demonstrates and codifies a suspicion of property owners that is unfounded and, in turn, places additional burden on municipalities with limited staffing and whose actions to recover costs are also limited. While municipalities are currently successful in implementing O&M

requirements of the past permit, municipalities are not equipped for a large increase in O&M Inspections of unregulated projects. Pervious pavements should not be

required to be tracked and inspected, instead, the County recommends that Permittees provide educational information on proper maintenance of pervious pavement to the property owner. If such a requirement is adopted, Property Owners could have a civil engineer certify in writing every 5 years that the area of pervious paving is still there or was replaced with an equivalent measure. The County appreciates the effort you and your staff have already made and will make to increase the efficiency of the O&M inspection and reporting process in the draft permit.

C.3.j.i.(1) – San Mateo County #4 – SKM

C.3.j - Green Infrastructure Planning and Implementation

This provision will be one of the most challenging portions of C.3 to implement and has a significant level of uncertainty in terms of what will constitute compliance. It also appears that the level of effort and resources required to implement Provision C.3 could be dramatically higher than implementing MRP 1.0 due to the new Green Infrastructure (GI) requirements, and will be especially challenging within the proposed time frames. We suggest the following recommendations:

- **Adjust the GI planning and implementation timeline:** Provide additional time to complete and obtain governing body approval of the GI framework; e.g. extend the deadline to the required reporting within two years of the permit effective date. Provide the entire permit term to complete the GI Plan and required components (e.g. updated planning documents, standards, specifications and design details).

  The County's primary concern regarding the timeline is due to the amount of time required to coordinate and prepare the GI Plan and associated documents, and the amount of time required to obtain and allocate adequate funding for such a large-scale and long-term planning effort. For example, the County is on a two-year budget cycle; budgets for FY 15-16 were recently adopted in June of 2015. In order to conduct the necessary planning, prepare the GI Plan, and implement early GI projects, the County would need to modify the existing budget and reallocate funds away from other stormwater tasks, maintenance activities, and essential services. Additionally, the County needs sufficient time to seek grant funding, coordinate resources with outside agencies (e.g., CalTrans and MTC), and potentially complete the Prop 218 process for creating/increasing the existing stormwater fee. The County also anticipates that the amount of time for mapping and prioritization, interdepartmental coordination, training/hiring staff, preparing RFPs, hiring consultants, and revising associated plans (e.g., General Plan, transportation and bicycle plans, storm drain plans, community specific roadway design standards) will be more than a 2-year planning effort. Revision of associated plans and the GI Plan will need approval by the County Board of Supervisor and public and environmental review; all of which require a significant amount of time.

C.3.j.ii. – San Mateo County #5 – SKM

- **Focus on future projects:** Provision C.3.j.ii requires early implementation of GI, focused on identifying and implementing public projects that have potential for GI measures (including LID treatment) within the permit term. It is unclear how compliance with this section will be determined. The process for review of planned capital projects needs to be more defined and objective, in order to avoid disagreements with Regional Water Board staff as to what are "missed opportunities". There also needs to be the recognition that while it may be technically feasible to add LID features to a capital project, the funding for the additional features and the ongoing maintenance of the LID features may not be available.

Implementation (i.e., design and construction) during the permit term of GI projects that are not already planned and funded will be very challenging for the County. Efforts during the MRP 2.0 term should focus on future development oflong-term GI Plans and opportunistic implementation of GI projects where feasible and where funding is available. It is unlikely that the County would be able to secure funding for capital improvement projects already in design phase to incorporate LID features. The County recommends that the permit focus on future projects; moving forward, the County is committed to Green Infrastructure.

C.11. – San Mateo County #6 – SKM

C.u- MERCURY CONTROLS

Provisions C.u.a – c in the Tentative Order generally parallel C.12.a – c. Therefore, the below comments on those provisions for C.12 (PCBs Controls) also generally apply to C.u (Mercury Controls).

C.12.a. – San Mateo County #7 – SKM

C.12 - PCBs CONTROLS

As for Provision C.3, the level of effort and resources required to implement Provision C.12 will be dramatically higher than the previous permit and the proposed timeframe is too short and does not align with what is proposed for development and implementation of the GI Plan. The lack of control over redevelopment and demolition will significantly affect the County's success with load reduction and the potential extent of the "hot spots," creates a high level of uncertainty in achieving the 3 kg/year load reduction performance metric and successful implementation of Provision C.12. Our overarching concerns are that:

1. Existing data, which is biased by targeted reconnaissance of suspected source areas, indicates that very few areas within San Mateo County contain significant concentrations of PCBs (greater than o.s parts per million).
2. C.12 does not appear to be based on adequate data to identify target areas where significant load reduction will be achieved.
3. The proposed C.12 requirements do not provide a clear and feasible pathway to attaining compliance with the load reduction requirements since acceptable control measures are not established.

The quality of source area/Hot Spot identification is paramount to the success ofload reduction efforts. To that end, San Francisco Estuary Institute (SFEI) has developed a draft report (Draft Report)[1]to help "highlight the need for an increasing focus on finding watersheds and land areas within watersheds at a scale paralleling management efforts (areas as small as polluted sub-watersheds, polluted "patches" of old industrial land use, or polluted source properties)." The Draft Report identified two main areas where data improvement still exists: 1) the identification of source properties (where focused effort using clean up and abatement techniques will cost-effectively remove large PCB masses); and 2) the ongoing need to identify areas of watersheds and subwatersheds where the application of green infrastructure and other redevelopment strategies will cost-effectively remove moderate PCB masses, with added benefits for mercury and other pollutants.

SFEI further concludes that:

[1] Sources, Pathways and Loadings: Mulit-Year Synthesis [Draft for Review]. Prepared by Lester J. McKee, A. N. Gilbreath, et al. San Francisco Bay Institute, Richmond, California. April 20, 2015

> "To address these weaknesses, there remains a need for further identification of more industrial patches and source properties and to identify and rank high leverage tributaries in relation to sensitive areas on the Bay margin. In addition to these high priority information weaknesses, the RWSM needs to be calibrated using improved parameterization and a greater number of source area rich calibration watersheds such that the model can be used to provide baseline loads to support planning analyses of management practice loading reduction potential. Knowledge about the performance of each management measure in relation to contamination levels in the landscape remains weak and there is presently no science basis for the design of a trends monitoring program to assess progress towards load reductions and improved environmental quality downstream."

The County is aware of approximately 222 urban and/or nonurban storm drain sediment samples that have been collected during numerous investigations county-wide between 2007 and 2015. Of this data, less than 10 percent (only 20 samples) of data exceeded one part per million (ppm) and the average and median concentrations are 0.979 ppm and 0.079 ppm, respectively. Within unincorporated San Mateo County, only 13 sample points exist and none of the data exceeds one ppm. The average and median concentrations in unincorporated San Mateo County are 0.138 and 0.056 ppm, respectively. On the whole, the vast majority of data is low in concentration and may be difficult to capture outside of the target areas.

Development and implementation of control measures will require additional data, which takes considerable time. As part of the sample collection, monitoring performed in San Mateo County consists of samples that were collected in February 2015. The anticipated publication date of the report for that monitoring event is September 2015. Accounting for planning and work plan preparation, nearly a year was needed to conduct the latest round of monitoring, underscoring the need for additional time to effectively collect and evaluate data.

Significant PCB target areas need to be identified prior to implementing control measures in order to manage public resources effectively. The County is concerned about committing resources for load reduction without first identifying verifiable target areas, which may result in irresponsible expenditure of resources that do not contribute to improving the Bay. Sufficient data is critical to assigning priority, funding, and jurisdictional obligation to specific cleanup/load reduction efforts. Attempting to reduce discharges from widespread areas of very low level PCBs will likely be difficult to capture, and is not anticipated to mitigate or offset the more significant PCB contamination existing in the Bay.

C.12.a. – San Mateo County #8 – SKM

C.12.a – Implement Control Measures to Achieve Load Reductions

- **Focus on implementation of PCBs control programs:** Load reduction performance criteria should not be the point of compliance. Compliance should be based upon implementing PCBs control programs designed to achieve a load reduction target, based on an interim accounting method. The target would be informed by what the BMP programs could achieve, based on the accounting system, which should be agreed upon by the Permittees and the Water Board upfront and incorporated into the permit.

At a minimum, the revised permit should specify actions identified in June 10, 2015 Staff Summary Report[2], such as:

- Control of PCB-containing wastes during building demolition;
- Storm drain and street cleaning in areas with high PCB levels;
- Cleanup and referral to the Water Board for cleanup of sites contaminated with high levels of PCBs;
- Diversion of first-flush stormwater runoff and dry weather flows to the sanitary sewer; and
- Green infrastructure retrofit of streets and storm drain systems.

As recommended By SFEI,3 the County recommends that the Water Board allow source control actions that result in:

- A large amount of PCBs and total mercury being removed from as few locations as possible. Thus it is important to find as many high leverage properties and source areas as possible.
- Potential multiple benefits - for example both PCBs and HgT pollution or other pollutants such as trash or unsightly housekeeping that can be dealt with at the same time
- Clear connection between the *in situ* pollutant and stormwater conveyance - for example evidence of off-site transport from the polluted area directly to a municipal storm drain inlet or some other conveyance system.

C.12.a.iii. – San Mateo County #9 – SKM

- **Adjust timelines:** Extend the deadlines for reporting and align timeline with the GI planning time frame. The County recommends a modified timeline to allow for more time to collect additional data, to confirm sources, and to plan GI projects as required by C.3. An adjusted timeline is necessary to prepare for implementation and assessment.

C.12.b. – San Mateo County #10 – SKM

C.12.b. Assess Load Reductions from Stormwater

- **Modifying performance criteria:** PCBs load reduction performance criteria should be in the form of Numeric Action Levels or benchmarks. In addition, the permit should include contingency language that would allow for achieving compliance if a good-faith demonstration of efforts and actions by Permittees consistent with permit requirements falls short of achieving the load reduction performance criteria. The permit should protect the Permittees from third party litigation should good-faith efforts fall short of meeting load reduction mandates.

C.12.b.iii. – San Mateo County #11 – SKM

- **Delete C.12.b.iii requirement for submitting Permittee-specific proportions ofload reduction responsibilities:** Provision C.12.b.iii requires that Permittees submit Permittee-specific proportions ofload reduction responsibilities and supporting data to the Water Board by April1, 2016-four months after the effective date of the permit. Although Permittees and the RMP have spent considerable time and resources towards identifying PCB hot spots and watersheds producing greater levels of PCBs to the Bay, data have not been collected

[2] San Francisco Bay Region, Water Quality Control Board, Staff Summary Report. Item 8 for the hearing to receive testimony on Tentative Order, all sections except Provision C.10, Trash Load Reduction. June 10, 2015.
[3] Sources, Pathways and Loadings: Mulit-Year Synthesis [Draft for Review]. Prepared by Lester J. McKee, A. N. Gilbreath, et al. San Francisco Bay Institute, Richmond, California. April20, 2015

at a level to which proportions of load reduction responsibilities could confidently be assigned to Permittees. Furthermore, assigning Permittee-specific responsibilities with high levels of uncertainty upon which compliance could be based is not good public policy and could inadvertently place responsibilities upon certain Permittees requiring the spending of public resources towards unfounded goals not based on actual water quality data.

The County recommends removing the requirement to develop and submit Permittee-specific proportions of load reduction responsibilities.

C.12.c. – San Mateo County #12 – SKM

C.12.c. Plan and Implement Green Infrastructure to Reduce PCBs Loads

- Remove Provision C.12.c: It is unnecessary to include performance criteria (120 gjyear over the final three years of the permit term) for PCBs load reductions through implementation of GI over the reissued permit term. PCBs load reductions will not be the driver for GI implementation during the reissued permit term. Regional Water Board staff has noted that based on extrapolation of data from the current permit term, the proposed metrics should be met via redevelopment in old industrial areas; however, redevelopment is uncertain and beyond the County's control. *As* per our comments on C.3, we recommend that the entire permit term be focused on GI planning with widespread implementation planned to take place in subsequent permit terms.

  The County recommends removing Provision C.12.c. The actual load reductions that Permittees expect to achieve via GI will be determined during the planning and reasonable assurance analysis required by Provision C.12.d., as part of planning for achieving the overall PCBs TMDL allocations.

C.12.f. – San Mateo County #13 – SKM

C.12.f. Manage PCB-containing Materials and Wastes during Building Demolition

- Encourage statewide/federal program approach: Meeting the Tentative Order's three year timeframe to develop a program to manage PCBs in building materials and wastes during demolition would likely require administration at the local level. This approach would result in highly inefficient use of scarce public funds and likely be ineffective at comprehensively and consistently addressing the problems. Allow at a minimum the entire permit term for Permittees to work with the State, USEPA, the building industry, and other stakeholders to attempt to develop a comprehensive statewide or federal program analogous to current programs for asbestos and lead paint. Given the multiple environmental and public health issues in play, USEPA should play a large role in development of this program.

C.14., Table 14.1. – San Mateo County #14 – SKM

C.14- CITY OF PACIFICA AND SAN MATEO COUNTY FECAL INDICATOR BACTERIA CONTROLS

Table 14.1. Numeric Targets, TMDLS, and Allocations Based on Allowable Exceedances of Single Sample Bacteria Objectives for San Pedro Creek and Pacifica State Beach

- Delete Table 14.1: The County believes that Table 14.1 should be deleted because Section 7.4.1.6 (pg. 7) of the Basin Plan Amendment (BPA) states that the Water Board will not include numeric limits, based on the wasteload allocations in the NDPES permit, if the discharger demonstrates that it has fully implemented technically feasible, effective and cost efficient BMPs to control all controllable

anthropogenic sources. However, the County and City of Pacifica have not yet been given the chance to demonstrate how effective its BMPs are. Furthermore, Section 7-4.1.5 of the BPA states that "dischargers are collectively responsible" for meeting the allowable exceedance-based wasteload allocations in Table 14.1. Several sources in addition to municipal stormwater runoff and dry-weather flows contribute bacteria to receiving waters. These include wildlife, sanitary sewer systems, and horse facilities, over which the County has little to no control.

C.14.a.ii. – San Mateo County #15 – SKM

C.t4.a. -Implement Control Measures to Achieve Indicator Bacteria Wasteload Allocations

- Delete C.14.a.ii (1) requirement for addressing illicit discharge from sanitary sewer lines: The County recommends removing Provision C.14.a.ii (1) because the County believes that it is inappropriate to include controls for sewer system in a stormwater system permit. Section 7-4.1.6 (pg. 6) of the BPA states that the Responsible Parties and Jurisdictions for the wasteload allocation for sanitary sewer systems will be implemented through the requirements and provisions of the Statewide General Waste Discharge Requirements Order for sanitary sewer systems and the CDO. The BPA does not mention the MRP as one of those jurisdictions. Thus, this MRP provision conflicts with the BPA.

C.14.a.ii. – San Mateo County #16 – SKM

- Adjust timeline/provide flexibility in language for sewer line repairs/replacement: If Provision C.14.a.ii (1) is kept in the Permit, the County recommends extending the timeframe to repair or replace failing sewer lines or changing Permit language to provide Permittees with flexibility in meeting time frame.

  Depending on extent of sewer line repairs/replacement, it may be difficult for Permittees to meet six month time frame outlined in Permit. At the County, expenditures over a certain dollar amount require approval from the Board of Supervisors, thus extending the timeframe to complete repairs/replacement. Permit language could be changed to provide Permittees with more flexibility to complete repairs/replacement. For example, permit could be changed to require repair/replacement within six months of discovery "at extent possible" or require repairs/replacement "to be *initiated* within six months of discovery."

C.14.b.iii. – San Mateo County #17 – SKM

C.t4.b. Conduct Water Quality Monitoring to Assess Attainment of Wasteload Allocations

- Delete C.14.b.iii.(1)(e) requirement for submitting plan describing additional control measures if wasteload allocations are not met by end Permit term: The County believes the provision in section C.14.b.iii.(1)(e) requiring a plan describing additional control measures or increased levels of existing measure to attain wasteload allocations should be deleted because it contradicts the BPA directive for an adaptive management plan and accelerates the wasteload allocation timeline.

  Section 7-4.1.8 (pg. 10) of the BPA states that Adaptive Implementation should be used to adapt the TMDL and implementation plan to incorporate new and relevant science. As such, the BMP and Implementation Plan for the TMDL watershed was developed with an adaptive and iterative approach. Requiring a new plan in Year 4 contradicts the BPA requirements for Adaptive Implementation.

Moreover, the requirement modifies and accelerates the wasteload allocation timeline approved by Regional Water Board and State Water Board contained in the BPA. The wasteload allocation timeline approved by Regional Water Board and State Water Board in the BPA sets deadlines to meet wasteload allocations within 8 years of effective TMDL date for Pacifica State Beach and within 15 years for San Pedro Creek Watershed.

C.14.b.iii. – San Mateo County #18 – SKM

- Delete Section C.14.b.iii.(1)(e): Provision C.14.b.iii.(1)(e) requires Permittees to submit an assessment by the end of Year 4 of the Permit term if wasteload allocations are not achieved. Permit is unclear on specific provisions of assessment at end of Year 4 and how this assessment would provide additional benefit to the annual TMDL Status and Monitoring report. The County suggests that this requirement be deleted and, in its place, additional reporting requirements or data analysis for this assessment be outlined as a provision of the TMDL report in Year 4 under Section C.14.b.iii.

C.14.c. – San Mateo County #19 – SKM

C.t4.c. – Conduct Water Quality Monitoring to Characterize Sources of Bacteria in The Project Area and to Asses BMP Facilities

- Reference to San Pedro Creek and Pacifica State Beach Bacteria TMDL Best Management Practices Implementation Plan and Monitoring Plan: In accordance with State Water Resources Control Board Resolution No. 2013-0007 approving the Basin Plan Amendment establishing the TMDL for bacteria in San Pedro Creek and at Pacifica State Beach, the County, in collaboration with the City of Pacifica, developed the San Pedro Creek and Pacifica State Beach Bacteria TMDL Best Management Practices Implementation Plan and Monitoring Plan (TMDL BMP and Monitoring Plan). This Plan was updated and revised following comments from Water Board staff and contains the control measures and monitoring elements required by Provision C.14. Provision C.14 in its entirety and C.14.c in particular should be revised to reference this Plan, rather than detail the specific requirements of the Plan.

C.14.c. – San Mateo County #20 – SKM

- Assurance of use of characterization monitoring results: The County would like assurance that the results of the County's and City of Pacifica's characterization monitoring will be taken into account for any future evaluations ofthe TMDL watershed. Past characterization studies have been conducted in the watershed revealing that exceedances are likely a result of uncontrollable sources that do not have an anthropogenic source such as wildlife (specifically avian wildlife). However, results ofthese studies were discounted by Water Board staff when discussing TMDL BMP and Monitoring Plan.

C.14.c.ii. – San Mateo County #21 – SKM

- Revise Provision C.14.c.ii.(1) to change sampling station requirements for characterization monitoring: Permit requires that Permittees conduct characterization monitoring at a minimum of twelve selected sampling stations in WY 2016 and every other year. The County suggests revising this provision to require characterization monitoring at twelve sampling stations in WY 2016 and then in subsequent years require Permittees to "collect a minimum of one hundred (100) pathogen indicator bacteria samples per water year."

  The requirement to monitor at twelve stations every year of monitoring does not allow the County and City flexibility to intensify sampling at select stations or expand the geographic scope of the program based on monitoring results. Section 7-4.1.8 of the BPA states that "The Water Board will adapt the TMDL and implementation plan

to incorporate new and relevant scientific information such that effective and efficient measures can be taken to achieve the allocations." The TDML BMP and Monitoring Plan approved by Regional Board staff is based on an iterative monitoring approach, which is not reflected in the Permit language.

Requiring a minimum number of samples (rather than a number of sampling locations and events) is the same approach required in Provision *C.B.f.* (Pollutants of Concern Monitoring) of the Permit, which allows for flexibility without diminishing level of effort. Permittees would have to collect same number of samples, but be allowed to change number and location of characterization monitoring sample sites based off results of monitoring from previous years. Changes in monitoring locations would be used to better characterize sources of bacteria and measure effectiveness of control measures.

C.14.c.ii.(2) – San Mateo County #22 – SKM

- **Note on definition for "wet weather":** Provision C.14.c.ii(2) states that wet weather is "any day with .1inch or more and following three days," as defined in the TMDL. The County would like to note that other regulating agencies have a significantly higher rainfall threshold for defining wet weather event. For example, in a Streambed Alteration Agreement, the CA Department of Fish and Wildlife, defines wet weather as "when there has been 1/4 inch of rain within a 24-hour period" (language was used for installation of LWD [large woody debris] in a stream; Notification #1600-2011-0139-R3 Streambed Alteration Agreement for project in Soquel Demonstration State Forest).

C.14.c.ii.(3) – San Mateo County #23 – SKM

- **Delete the requirement to analyze samples for human-, horse-, and dog-specific genetic markers from Provision C.14.c.ii.(3); alternatively, limit these constituents to WY2016 monitoring:** The Permit is not clear whether these constituents should be analyzed beyond Water Year (WY) 2016. As described in the TMDL BMP and Monitoring Plan, the County and City are committed to conducting this type of monitoring in WY2016. However, results from prior studies conducted in the San Pedro Creek Watershed using these methodologies were discounted by Water Board staff when discussing TMDL BMP and Monitoring Plan. Genetic marker analyses are very costly and the value of repeating them beyond WY2016 is uncertain both in terms of scientific knowledge gained and Water Board acceptance of any findings from the sampling.

C.14.c.ii.(5) – San Mateo County #24 – SKM

- **C.14.c.ii.(5) - Delete the requirement for review and acceptance of any and all changes to the characterization monitoring plan in subsequent years (e.g., WY2018, WY2020, etc.).** Characterization monitoring, as described in the TMDL BMP and Monitoring Plan and Provision C.14.c.i. is intended to be iterative in nature and allow for flexibility of design and details in years subsequent to WY2o16. Executive officer review and acceptance of changes to the plan may be lengthy and/or result in unnecessary additional investigation with unknown cost and schedule implications.

A'ITACHMENT A– FACT SHEET

Fact Sheet, C.14. – San Mateo County #25 – SKM

- **In the fact sheet findings in support of Provision C.14, add acknowledgement of ecological differences between TMDL watershed and reference watershed:** The County believes that the fact sheet finding for Provision C.14 should include an acknowledgement that the reference composite watersheds used to set the bacteriological water quality objectives in the BPA differs

ecologically from the Pacifica State Beach/San Pedro Creek watershed. Water availability is one of the most significant factors that contribute to the current vegetation distribution and successional patterns along the CA coast (Hsu et al. 2012). Pacifica State Beach and the San Pedro Creek watershed experiences additional moisture input from the coastal fog which increases the productivity and diversity of the vegetation communities found in the watershed. Productive habitats provide additional shelter and forage and are able to support increased populations of wildlife. The composite reference sites are from southern California, where moisture is the limiting factor for vegetation productivity along the coast and further inland. The RWQCB has not considered the ecological differences between the reference site and the San Pedro Creek watershed adequately to accommodate for additional bacteria loading from wildlife sources due to differences in the ecological communities.

We look forward to continuing to work with you and your staff to resolve the issues described in this letter. Please contact me at 650/363-4598 or Jim Eggemeyer, Director, Office of Sustainability at 650/363-4189 if you have any questions or would like to further discuss any of our comments.

Sincerely,

Peggy Jensen
Deputy County Manager

C.C. John Maltbie, County Manager
John Beiers, County Counsel
Jim Eggemeyer, Director, Office of Sustainability

OFFICE OF THE MAYOR

330 West 20th Avenue
San Mateo, California 94403-1388
Telephone (650) 522-7048
FAX: (650) 522-7041
www.cityofsanmateo.org

July 2,2015

Mr. Bruce Wolfe
Executive Officer
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland,CA 94612

Subject: Comments on the Tentative Order for the Reissued NPDES Stormwater Municipal Regional Permit

Dear Mr. Wolfe:

The City of San Mateo appreciates this opportunity to comment on the Tentative Order for the reissued NPDES stormwater municipal regional permit ("MRP 2.0") that was recently released by the San Francisco Bay Regional Water Quality Control Board (Regional Water Board) staff.

General – Hope comments contribute to constructive dialog resulting in further revisions – San Mateo #1 – SKM

Our comments reflect the importance of developing permit requirements that are flexible,practical,and cost-effective while meeting the challenges of continuing to protect water quality in our local creeks and San Francisco Bay. Our intent is for these comments to contribute to a constructive dialog that will result in additional permit revisions.

Please note that this letter focuses on our highest priority areas of concern for the City of San Mateo specifically, which are Provisions C.3 (New Development and Redevelopment,especially the Green Infrastructure provision),C.10 (Trash Load Reduction), and C.11/12 (Mercury and PCBs Controls).

C.12. – San Mateo #2 – SKM

Of particular concern is that Provision C.12 (PCBs Controls) continues to fall well short of providing Permittees with a clear and feasible pathway to attaining compliance.Please see the below sections for more details.

General – Concur/support and incorporate by reference SMCWPPP's comments – San Mateo #3 – SKM

For detailed comments on other sections of the permit,please refer to the comment letter submitted separately by the San Mateo Countywide Clean Water Program (SMCWPPP). We concur with and support all of SMCWPPP's comments and incorporate them here by reference.

For each high priority issue that we have identified,a corresponding recommended revision to the Tentative Order is presented below,organized by each provision for which we are providing comments.

C.3.b.i. – San Mateo #4 – SKM

C.3.b.i - Regulated Projects

Provision C.3.b requires that any Regulated Project that was approved before any C.3 requirements were in effect (i.e., does not have a stormwater control plan) and has not begun construction before MRP 2.0 takes effect must comply with provisions C.3.c and C.3.d (LID treatment and sizing requirements).

- **Issue**: Permittees do not have the legal authority to impose new requirements on projects with approved Vesting Tentative Maps and/or development agreements, and therefore will face non-compliance with this requirement. Furthermore, it may be difficult for a project to change its site design and layout to accommodate LID treatment measures required by C.3.c and C.3.d.

  Requested Revision: Delete this requirement. It would have minimal water quality benefit and will likely lead to legal battles with developers. Only a small number of projects and a small percentage of impervious surface created/replaced would be subject to this requirement. However, if the requirement remains, then at a minimum include language to allow flexibility in implementation (for example, "provide treatment to the extent feasible" and allow use of media filters) for projects that have prior approval.

C.3.c.i.(2)(b) – San Mateo #5 – SKM

C.3.c.i.(2)- LID Site Design

Permittees are required to collectively develop and adopt design specifications for pervious pavement systems, subject to Executive Officer approval. Countywide program guidance manuals already include pervious pavement specifications.

- **Issue:** The process for compliance with this provision is unclear (i.e., whether and what type of submittal is required, and by when). In addition, the definition of pervious pavement systems does not include grid pavements (e.g., turf block or plastic grid systems).

  Requested Revision: Allow Permittees to reference a regional or countywide pervious paving specification in their annual reports (including a web link to the document) that meets the intent of this provision. Expand the definition of pervious pavement systems to include grid pavements.

C.3.e.ii.(4) – San Mateo #6 – SKM

C.3.e.ii - Special Projects

The Special Projects criteria for LID treatment reduction credits include criteria for density expressed as Floor Area Ratio (FAR)[1] or Dwelling Units (DU) per acre. Both criteria are computed based on the size of the project site. The current permit allows jurisdictions to define FAR and calculate DU/acre consistent with their standard practices. MRP 2.0 prescribes specific definitions for each and requires that they be computed based on the total area of the site (e.g., DU/ac based on gross density[2]). The Permittees requested changes to the definitions as part of early input on the Administrative Draft and the changes were not incorporated.

- **Issue:** Permittees typically use a definition of gross density that excludes public rights-of-way. Using gross density as defined in the Tentative Order will result in a lower density value that may prevent some valuable high density projects from qualifying for LID treatment reduction credits. Similarly, Permittees would like to exclude public rights-of-way and public plaza areas from the computation of FAR.

[1] Floor area ratio is defined as the ratio of the total floor area on all floors of all buildings at a project site (except structures, floors, or floor areas dedicated to parking) to the total project area.

[2] Gross density is defined as the total number of residential units divided by the acreage of the entire site area, including land occupied by public rights-of-way, recreational, civic, commercial and other non-residential uses.

Requested Revision: Change the definitions of FAR and gross density to exclude public plazas, public rights-of-way, and civic areas.

C.3.g.iv. – San Mateo #7 – SKM

C.3.g.iv - Hydromodification Management (HM) Standard – Methodology for Direct Simulation of Erosion Potential

The Tentative Order contains similar HM standards and requirements for Permittees to those in the current permit. In addition, the Tentative Order allows the Permittees to collectively propose a method for sizing of HM facilities based on direct simulation of erosion potential, which may allow more efficient facility sizing.

- **Issue:** The method must be submitted to the Regional Water Board for review and adopted as a permit amendment before it can be applied. This administrative hurdle is unnecessary, as the method is consistent with the current HM standard (and it is the only requirement in the Tentative Order requiring an amendment), and will cause delay and uncertainty as to when the methodology can be used. Also, the provision contains several typos that make the requirements somewhat confusing.

  Requested Revision: Allow Executive Officer approval of the sizing methodology.

C.3.h.ii.(7) – San Mateo #8 – SKM

C.3.h - Operation and Maintenance of Stormwater Treatment Systems

- **Issue:** C.3.h.ii.(7) contains requirements for O&M Enforcement Response Plans. Section (c) requires that corrective actions for identified O&M problems with pervious pavement, treatment, and HM systems be implemented within 30 days of identification, and if more than 30 days are required, a rationale must be recorded in the Permittee's inspection tracking database. The process of contacting and educating the property owner, allowing the property owner to arrange for maintenance work to be completed, and following up with a re-inspection typically takes more than 30 days. In the Phase I Manager's early input on the Administrative Draft, a correction period of 90 days was requested, consistent with current practice by some Permittees and some existing maintenance agreements.

  Requested Revision: Allow 90 days for completion of permanent corrective actions.

C.3.h.ii.(6)(b) – San Mateo #9 – SKM

- **Issue:** Changes were made to allow Permittee to track inspections by the number of sites instead of numbers of treatment/HM facilities, which was an improvement, but inspection of at least 20% of the total number of Regulated Projects is required each year. Permittees have requested more flexibility around that number while still meeting the requirement of inspection of each site at least once every five years.

  Requested Revision: Change language to require inspection of "approximately 20%" of sites per year.

C.3.j.i., C.11, C.12 – San Mateo #10 – SKM

C.3.j - Green Infrastructure Planning and Implementation

Provision C.3.j.i requires each Permittee to develop a GI Plan. The GI Plan must include: mechanism to prioritize and map potential GI project areas; maps and lists generated by this mechanism, for implementation within 2, 7, and 12 years of the Permit effective date; targets for amounts of

retrofitted impervious surface within 2, 7, 12, 27, and 52 years; tracking and mapping of installed GI systems; streetscape design and construction details and standards; a list of updates and modifications to existing related Permittee planning documents; and reporting on all of the above elements. Permittees must also prepare and submit annually a list of planned and potential GI projects, based on a review of capital improvement projects, and a summary of how each project will include GI to the Maximum Extent Practicable (MEP) or why it was impracticable to implement GI.

- **Issue:** The language in Provision C.3.j needs to be more consistent with the expectations in Provisions C.11 and C.12 for achieving PCB and mercury load reductions with GI. Discussions with Regional Water Board staff on C.11 and C.12 have suggested that load reductions required by GI over the MRP 2.0 permit term can be accomplished by private development and redevelopment, whereas C.3.j only refers to public retrofits.

  Requested Revision: Make more explicit in C.3.j (as well as in C.11/12) that private development and redevelopment as well as public projects will count toward meeting PCB and mercury load reductions, and that constructed public GI projects within the permit term are not required for compliance with GI pollutant load reductions.

C.3.j.i.(1)(a) – San Mateo #11 – SKM

- **Issue:** Additional flexibility in approaches to mapping and prioritization is needed. In addition, the time intervals for planning should be aligned with fiscal years, and made consistent with the time intervals for load reductions in C.11/12.

  Requested Revision: The mechanisms used to develop the GI Plan and priorities should include other less complex tools in addition to the GreenPlan-IT tool. The time intervals should be changed to FY 19-20, FY 24-25, and FY 29-30 (to align with C.11/12 load reduction reporting intervals of 2020 and 2030).

C.3.j.i.(1)(c) – San Mateo #12 – SKM

- **Issue:** Provision C.3.j.i(1)(c) requires Green Infrastructure Plans to include "targets for the amount of impervious surface within the Permittee's jurisdiction to be retrofitted" within 2, 7, 12, 27, and 52 years of the Permit effective date. It is unclear how these "targets" are to be established by each Permittee. In addition, the timeframes for establishing "targets" (we would prefer the term "projections") for the amount of impervious surface retrofitted do not line up with the C.11/12 load reduction timeframes, making it difficult to calculate projected load reductions.

  Requested Revision: Allow the development of "projections" instead of "targets", and allow Permittees to include projected private development as well as public projects. Allow projections to be developed for the years 2020, 2030, 2040, and 2065, consistent with C.11/12 and with other municipal planning documents.

C.3.j.ii. – San Mateo #13 – SKM

- **Issue:** Provision C.3.j.ii requires early implementation of GI, focused on identifying and implementing public projects that have potential for GI measures (including LID treatment) within the permit term. It is unclear how compliance with this section will be determined. The process for review of planned capital projects needs to be more defined and objective, in order to avoid disagreements with Regional Water Board staff as to what are "missed opportunities". There also needs to be the recognition that while it may be technically feasible to add LID features to a capital project, the funding for the additional features and the ongoing maintenance of the LID features may not be available. Implementation (i.e., design and construction) during the Permit term of GI projects that are not already planned and funded will be very challenging.

Requested Revision: Efforts during the MRP 2.0 term should focus on development of long-term GI Plans and opportunistic implementation of GI projects where feasible and where funding is available. Add language proposed by the Permittees as early input to the Administrative Draft Permit (as shown in the footnote below[3]) that would allow for consistent review of capital projects for GI opportunities, based on specified criteria.

C.10 - TRASH LOAD REDUCTION

C.10.a.i. – San Mateo #14 – SKM

C.10.a.i – Trash Reduction Requirement Schedule

- **Issue:** Reductions become increasingly more challenging the closer Permittees move towards the trash reduction goal of "no adverse impacts". Provision C.10.a.i (Schedule) requires a 70% load reduction by 2017. This schedule is too rigorous and should be extended to allow for more time to develop/implement sustainable control measures. Most of the areas remaining to address are moderate trash generating areas and willing likely require more innovative controls that will have to be piloted.

  Requested Revision: We request that the 70% load reduction time schedule, set for 2017 in the Tentative Order, be extended at least to 2018.

C.10.a.ii. – San Mateo #15 – SKM

C.10.a.ii.b – Trash Generation Area Management (Private Drainage Areas)

- **Issue:** Provision C.10.a.ii.b (Trash Generation Area Management) requires Permittees to map and assess ALL private drainages 5,000 ft^2 and greater, determine the level of trash present in these areas, and ensure that no further actions are needed. The intent of mapping these drainages is unclear. Mapping would require a significant undertaking that would result in minimal water quality benefit. Ensuring that private drainages are at a "low" trash generation level does not require mapping. Areas can be identified by modifying existing municipal inspection programs already in place.

  Requested Revision: We request that the mapping requirement be removed from this provision. As an alternative, Permittees should be required to: 1) identify high priority areas that generate moderate, high or very high levels of trash and are plumbed directly to their storm drain systems, and 2) cause these areas to be managed to a level equivalent to the performance of a full capture system or to a low trash generation level.

C.10.a.iii. – San Mateo #16 – SKM

- **Issue:** Throughout the Bay Area thousands of Green Infrastructure (C.3 compliant) facilities have been constructed on properties over the last 10+ years, including dozens of facilities and at least 35 acres in San Mateo. These facilities were designed consistent with the new and redevelopment requirements and perform at a level similar to typical trash full capture systems. These systems have been designed to prevent flooding and effectively remove pollutants from stormwater. Provision C.10.a.iii (Mandatory Minimum Full Trash Capture Systems) currently requires Permittees to install a screen (5mm) to the overflow pipes of all

[3] Proposed language: "Permittees shall review and analyze appropriate projects within the Permittee's capital improvement program, and for each project, assess the opportunities and associated costs of incorporating LID into the project. The analysis shall consider factors such as grading and drainage, pollutant loading associated with adjacent land uses, uses of available space with the project area, condition of existing infrastructure, opportunities to achieve multiple benefits such as providing aesthetic and recreational resources, and potential availability of incremental funding to support LID elements along with other relevant factors… Permittees will collectively evaluate and develop guidance on the criteria for determining practicability of incorporating green infrastructure measures into planned projects."

Green Infrastructure facilities before these devices can be considered full capture systems. Screening the overflow pipes would be out of the scope of the municipality's authority, as nearly all treatment facilities are privately owned and maintained. Additionally, adding screens to existing facilities would have unknown effects to the performance of these systems and would likely increase the maintenance and flooding if retrofitted with screens. The requirements for the sizing and design of green infrastructure facilities are now well established. Requiring modifications to these designs for trash just doesn't make sense. The Water Board established provisions requiring these facilities based on their ability to remove pollutants attached to small particles less 0.1mm in size, but is now requiring modifications for trash items that are at least 20 times greater in size. Trash items ARE effectively removed by these facilities without modification.

Requested Revision: We request that the Water Board remove the requirement for "screening" all Green Infrastructure treatment facilities installed and maintained consistent with provision C.3 and in the Permit deem that these facilities are equivalent to full capture systems.

C.10.b.iv. – San Mateo #17 – SKM

C.10.b.iv - Source Controls

The most important actions that can be taken by Permittees are those that eliminate the generation of litter prone items in perpetuity. Bay Area Permittees have been national leaders on taking actions to eliminate the sale or distribution of liter prone items. Nearly every Permittee in the Bay Area has adopted an ordinance focused at eliminating certain types of trash in our creeks and the Bay. These actions took significant political support, public resources and were done in partnership with environmental NGOs.

- **Issue:** Permittees to-date have focused on a instituting a number of different types of source control actions. The City of San Mateo implemented a single use plastic bag ban, and an expanded polystyrene bans; and accounted for 7% and 5% respective reductions for each of these in the 2013/2014 Annual Report. 13/14 Annual Report included assessment methods and accounting/supporting evidence. The Regional Water Board essentially accepted this reduction, in their review of our annual report and assertion/assumption of our compliant status. It will be very difficult to justify less of an overall reduction claimed thus far, in particular because the reduction of 12%, by these two source control methods, is now being disputed after already being accepted. In fact, this would greatly affect the potential for implementing future source control efforts.

  The maximum of 5% reduction for all source control actions is arbitrary and inconsistent with our currently knowledge of the percentage of trash in stormwater associated with specific litter-prone items associated with source control actions. The programs put into place to address these litter prone items are effective and directly impact stormwater quality.

  Requested Revision: We request that the TO be revised to increase the maximum reduction value for all source control actions combined to 25%. Supporting evidence would be required to claim reductions associated with source controls.

C.10.b.v. – San Mateo #18 – SKM

C.10.b.iv - Receiving Water Observations

- **Issue:** The TO requires the Permittees conduct receiving water observations downstream from trash generation areas converted to "low" trash generation. By requiring Permittees to focus on areas downstream of control actions, appears that receiving water observations could be used to judge compliance with reductions associated with municipal stormwater. Confusing, because the process to judge compliance with stormwater reductions is outlined in the TO – full capture, visual assessments, source control values, and offsets associated with cleanups.

  We are supportive of an ambient monitoring program that would continue to evaluate trash conditions or levels in local creeks and rivers using a cost-effective and practical protocol. This protocol, however, has not yet been developed.

  Requested Revision: We request that the TO language be revised to state that purpose of receiving water observations is "…to evaluate the level of trash present in receiving waters over time, and to the extent possible determine 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)." Additionally, we are willing to be a partner with the Water Board and NGOs in developing and pilot-testing a protocol during the permit term to achieve this purpose.

C.10.e.i. – San Mateo #19 – SKM

C.10.e.i – Optional Trash Load Reduction Offset Opportunities - Creek and Shoreline Cleanups

Creek and shoreline cleanups are important actions that promote community involvement, create awareness of trash issues, and improve water quality. These actions have water quality value, are supported by the community and environmental NGOs, and should be accounted for accordingly in the load reduction accounting method.

- **Issue:** While we appreciate the inclusion of load reduction benefits associated with creek and shoreline cleanups, the 5% maximum offset for these important actions is too small and inconsistent with the environmental benefit. Additionally, the arbitrary 10:1 ratio of trash removed to offset value is too large and under values the benefits of these actions.

  The requirement for a minimum cleanup frequency of 2x/year at each specific site creates inflexibility and is too constraining. What's important is that trash is being removed from creeks and shorelines, not how many times at a specific site. San Mateo Creek/shoreline cleanups include the Bayfront Cleanup, which occurs annually as a single day event. September 2014 was the 30th Anniversary of the event in San Mateo.

  The 2014 event drew 957 volunteers and removed 597 gallons of material for recycling and 4682 gallons of debris as trash from our waterways. San Mateo staff and volunteers cleaned 4 miles of shoreline including portions of San Mateo Creek, surrounding the Bayfront Levee system from Coyote Park, Ryder Park, and Seal Point Park. The existing language would disincentivize this event, which is one of the largest in the Bay Area.

  Requested Revision: We request that the TO be revised to:

  - Increase the maximum offset for creek and shoreline cleanups to 10%;
  - Reduce the ratio of trash removed to reduction value to 3:1, similar to other types of mitigation programs; and,

- Remove the requirement that a site be cleanup at least 2x/year before claiming an offset.

C.10.e.ii. – San Mateo #20 – SKM

C.10.e.i – Optional Trash Load Reduction Offset Opportunities – Direct Discharge Trash Controls

This offset is intended to address trash impacts associated with non-stormwater pathways to creeks and rivers such as illegal dumping directly into water bodies. These pathways directly impact water bodies and at some sites serve as the dominant source of trash. Programs that address trash from direct discharges should be accounted for accordingly in the load reduction accounting method.

- **Issue:** While we appreciate the inclusion of load reduction benefits associated with direct dumping, the 10% maximum offset for these important programs is too low and inconsistent with the environmental benefit of these programs. Additionally, the arbitrary 10:1 ratio of trash removed to offset value is too large and under values the benefits of these actions. Lastly, Permittees post-2016 may identify direct discharges as an important source of trash to receiving waters and therefore the 2016 Annual Report should not be the only timeframe when Permittees can submit a plan to address these sources.

  Requested Revision: We request that the TO be revised to:

  - Increase the maximum offset for programs addressing direct discharges to 25%; and,
  - Reduce the ratio of trash removed to reduction value to 3:1, similar to other types of mitigation programs.
  - Allow for submittals of plans to control direct discharges post-2016.

C.10.f. – San Mateo #21 – SKM

C.10.f - Reporting

- **Issue:** Compliance with NPDES permits is determined by the Water Board. Provision C10.f.v.b requires the Permittees to "submit a report of non-compliance" if it cannot demonstrate the attainment of 70% reduction, which therefore assumes that compliance determinations are made by the Permittee.

  Requested Revision: We request that the Water Board revise this provision to require that a Permittee that cannot demonstrate a 70% reduction, "submit a report and updated Long-term Trash Load Reduction Plan that describes actions to comply with the mandatory deadlines in a timely manner…"

C.11. – San Mateo #22 – SKM

C.11 - MERCURY CONTROLS

Provisions C.11.a – c in the Tentative Order generally parallel C.12.a – c. Therefore, the below comments on those provisions for C.12 (PCBs Controls) also generally apply to C.11 (Mercury Controls).

C.12 - PCBs CONTROLS

C.12.a. – San Mateo #23 – SKM

C.12.a – Implement Control Measures to Achieve Load Reductions

The Tentative Order appears to require Permittees to reduce PCBs loads to the Bay by 3 kg/year by the end of the permit term. The approach includes developing an accounting system for Executive

Officer approval early in the permit term that would form the basis for the load reductions credited to the various PCBs controls.

- **Issue:** There is a lack of a clear and feasible pathway for Permittees to attain compliance with the load reduction requirements. Most factors that would be key to meeting the criteria are uncertain and many are not within Permittee control (e.g., extent of source properties that will be found, building demolition rates, and redevelopment rates), making achievement of compliance uncertain.

  Requested Revision: Load reduction performance criteria should not be the point of compliance. Compliance should be based upon implementing PCBs control programs designed to achieve a load reduction target (such as a Numeric Action Level or similar mechanism for triggering requirements for additional action and reporting), based on an interim accounting method (see next section). The target would be informed by what the BMP programs could achieve, based on the accounting system, which would be agreed upon upfront and incorporated into the permit.

C.12.a. – San Mateo #24 – SKM

- **Issue:** The schedule for the following reporting requirements in Provision C.12.a. is unrealistic.
  - Provision C.12.a.iii.(1) - February 1, 2016 report providing "a list of watersheds (or portions therein) where PCBs control measures are currently being implemented and those in which control measures will be implemented (C.12.a.ii.(1)) during the term of this permit as well as the monitoring data and other information used to select the watersheds."
  - Provision C.12.a.iii.(2) - 2016 Annual Report providing "the specific control measures (C.12.a.ii.(2)) that are currently being implemented and those that will be implemented in watersheds identified under C.12.a.iii.(1) and an implementation schedule (C.12.a.ii.(3)) for these control measures. This report shall include: …. [scope, start dates, progress milestones, schedules, roles and responsibilities of Permittees, etc...]....".

  Requested Revision: Extend the deadlines for the above reports to the 2017 Annual Report.

C.12.b. – San Mateo #25 – SKM

C.12.b. Assess Load Reductions from Stormwater

SMCWPPP, other countywide stormwater programs, and Regional Water Board staff recently worked together to develop an interim accounting method. It was intended to provide a basis for stipulated load reduction benefits for implementation of the primary PCBs control programs that Permittees anticipate implementing during the MRP 2.0 permit term (this interim accounting method would be revised before the next permit term). We appreciate that Regional Water Board staff included much of the information developed for the interim accounting method in the fact sheet.

- **Issue**: Values for certain key accounting parameters for managing PCBs-containing materials and wastes during building demolition activities were left out.

  Requested Revision: Include in the interim accounting method values for all parameters to allow for scrutiny during the public permit review process, given the uncertainty in these values. It is especially important to include values for all parameters associated with

managing PCBs-containing materials and wastes during building demolition activities, including the fraction of PCBs mass in a building that enters the MS4 during demolition in the absence of enhanced controls, which is particularly uncertain. Stormwater programs can also provide similar values for mercury to include in the fact sheet as well.

C.12.b.iii. – San Mateo #26 – SKM

- **Issue**: Requirement to formally submit load reduction assessment methodology early in the permit term for Executive Officer approval creates uncertainty in the load reduction benefit for each PCBs control program.

  Requested Revision: Omit the requirement to submit load reduction accounting method early in the permit term. Instead, the interim accounting method should be finalized, incorporated into the permit, and then used to calculate PCBs load reductions during Permittee annual reporting.

C.12.a. & c. – San Mateo #27 – SKM

- **Issue**: Water Board staff has acknowledged that load reduction performance criteria are not numeric effluent limits. This should be made clear in the permit. In addition, further clarity is needed regarding the legal definition of the performance criteria and implications with regard to enforcement and potential third party lawsuits.

  Requested Revision: PCBs load reduction performance criteria should be in the form of Numeric Action Levels or a similar mechanism for triggering requirements for additional action and reporting. In addition, the permit should include contingency language that would allow for achieving compliance if a good-faith demonstration of efforts and actions by Permittees consistent with permit requirements falls short of achieving the load reduction performance criteria.

C.12.b.iii. – San Mateo #28 – SKM

- **Issue:** Provision C.12.b.iii requires that Permittees submit Permittee-specific proportions of load reduction responsibilities and supporting data to the Water Board by April 1, 2016 – four months after the effective date of the permit. Although Permittees and the RMP have spent considerable time and resources towards identifying PCB hot spots and watersheds producing greater levels of PCBs to the Bay, data have not been collected at a level to which proportions of load reduction responsibilities could confidently be assigned to Permittees. Furthermore, assigning Permittee-specific responsibilities with high levels of uncertainty upon which compliance could be based is not good public policy and could inadvertently unduly place responsibilities upon certain Permittees requiring the spending of public resources towards fictitious goals not based in reality.

  Requested Revision: Delete requirement to develop and submit Permittee-specific proportions of load reduction responsibilities.

C.12.c. – San Mateo #29 – SKM

C.12.c. Plan and Implement Green Infrastructure to Reduce PCBs Loads

Provision C.12.c of the Tentative Order requires Permittees to implement Green Infrastructure projects during the term of the permit to achieve PCBs load reductions of 120 g/year over the final three years of the permit term. Additionally, Permittees are required to prepare a reasonable assurance analysis to demonstrate quantitatively that PCB load reductions of at least 3 kg/yr throughout the Permit area will be achieved by 2040 through implementation of Green Infrastructure plans required by Provision C.3.j.

- **Issue**: It is unnecessary to include performance criteria for PCBs load reductions through

implementation of GI over the reissued permit term. PCBs load reductions will not be the

driver for GI implementation during the reissued permit term. Regional Water Board staff has noted that based on extrapolation of data from the current permit term, the proposed metrics should be met via redevelopment in old industrial areas. Thus the proposed criteria would not influence GI implementation during the reissued permit term and meeting them would instead be dependent upon an activity that is not under Permittee's control. While we expect to learn valuable lessons via opportunistic early implementation of GI retrofit projects through Provision C.3.j.ii, the pollutant load reductions associated with these retrofits implemented over MRP 2.0 is anticipated to be relatively small.

Requested Revision: Provision C.12.c should be deleted.

C.12.c. – San Mateo #30 – SKM

- **Issue**: It does not make sense to prejudge that PCBs load reductions of at least 3 kg/yr throughout the Permit area should be achieved by 2040 through implementation of Green Infrastructure plans. The actual load reductions that Permittees expect to achieve via Green Infrastructure will be determined during the planning and reasonable assurance analysis required by Provision C.12.d., as part of planning for achieving the overall PCBs TMDL allocations.

  Requested Revision: Provision C.12.c should be deleted.

C.12.f. – San Mateo #31 – SKM

C.12.f. Manage PCB-containing Materials and Wastes during Building Demolition

Provision C.12.f requires development of a program to manage PCBs in building materials and wastes during demolition. Given the large standing stock of PCBs known to be present in certain buildings in the Bay Area, there could potentially be significant benefits to implementing the proposed control program. However, we are not aware that any data exist regarding the amount of PCBs-containing materials that are released to the ground during demolition and then mobilized into the MS4 by urban runoff, making it challenging to project with any certainty the actual water quality benefit of the proposed control program. Cost-effectiveness relative to other PCBs controls is also highly uncertain at this time.

- **Issue**: The various potential problems associated with PCBs in building materials (i.e., water quality, human exposure at the site, and disposal) should be addressed holistically on a statewide or federal basis rather than focusing on water quality controls in the Bay Area only. Meeting the Tentative Order's three year timeframe to develop a program to manage PCBs in building materials and wastes during demolition would likely require administration at the local level. This inappropriate and rushed approach would result in highly inefficient use of scarce public funds and likely be ineffective at comprehensively addressing the problems. It would also likely result in inconsistent programs across the Bay Area.

  Recommended Solution: Allow at a minimum the entire permit term for Permittees to work with the State, USEPA, the building industry, and other stakeholders to attempt to develop a comprehensive statewide or federal program analogous to current programs for asbestos and lead paint. Given the multiple environmental and public health issues in play, USEPA should play a large role in development of this program.

C.15 - CONDITIONALLY EXEMPTED DISCHARGES

C.15.b. – San Mateo #32 – SKM

C.15.b – Conditionally Exempted Non-Stormwater Discharges

- **Issue:** In responding to public comments, the SWRCB directed all Regional Water Boards to continue to specify potable discharge requirements in municipal stormwater permits and, on a going-forward basis, it left it up to them as to how best to craft such requirements: "Regional Water Boards adopting such permits *are charged with* determining appropriate requirements to protect water quality and address the needs of both the MS4 and drinking water discharges on a system-specific basis."

  In addition, there is still a grey area relating to planned potable discharges from "non-water purveyor" types of discharges, such as water system testing/flushing for new developments (not subject to the General Construction Permit), and private property fire hydrant flushing/testing. These are not covered in the new permit, and were vague in MRP 1.0, as the BMPs were only required by "purveyors", implying that planned potable discharges by developers (not covered by the GCP), were conditionally exempt and did not require additional BMPs. These non-water purveyor discharges are not currently covered in the proposed State Potables Permit, which is unlikely to extend coverage to these smaller entities. By leaving these types of discharges out, it implies that they are prohibited entirely. Clarification is needed.

  Requested Revision: The Water Board should either restore Provisions C.15.b.iii (1) and (2) from the current MRP or craft new sub provisions that would specify that "Potable water discharges that meet the Discharge Specifications set forth in Section IV.A or the Multiple Uses or Beneficial Reuse terms set forth in Section VI of the Statewide General NPDES Permit for Drinking Water Systems Discharges, Order WQ 2014-0194-DWQ shall be deemed to be conditionally exempt provided that the Permittees maintain records of these discharges, BMPs implemented, and any monitoring data collected."

  If C.15.b.iii (1 and (2) are restored, Planned Potable Discharges from "non-water purveyors" should be added to MRP 2.0 to allow municipalities to approve these smaller potable water discharges from "non-purveyors", that aren't captured anywhere else.

We look forward to continuing to work with you and your staff to resolve the issues described in this letter. Please contact me at 650-522-7002 or lpatterson@cityofsanmateo.org if you have any questions or would like to further discuss any of our comments.

Sincerely,

	7/2/2015		7/2/2015
Mayor Maureen Freschet City of San Mateo	Date	Larry A. Patterson City Manager City of San Mateo	Date

lu l y6, 2015

San Pablo
bftd
All-America City
fiTfP

CITY 0r SAN PABLO 2014
City •? f N<'ll' Dir a tion.,

Bruce Wolfe, Executive Officer
California Regional Water Quality ontrol Board
San Francisco Bay Region
·1515 Clay Street
Oakland, CA 94612

Via email to: mr p.reissuance@waterboarcls.ca.gov

Subject: Opposition to the Tentative Order Reissuing the Municipal Regional Stormwater Permit (MRP 2.0)

Dear Mr. Wolfe and Members of the Board:

General – San Pablo – #1 – STL

The City of San Pablo is a disadvantage community with limited funds; therefore, the programs implemented as part of MRP 2.0 must be effective in improving water quality and provide a clear path to compliance. The current Tentative Order includes unrealistic timeframes, unclear compliance language and methodology, and burdensome reporting that provides minimal water quality benefits. Therefore, the City of San Pablo opposes MRP 2.0 as it is currently drafted, asks that your Board consider the following comments, and direct Water Board staff to work with permittees to revise the Tentative Order.

C.3. – San Pablo – #2 – STL

The draft Tentative Order includes a new mandate to develop Green Infrastructure Plans. This coordinated, multi-year effort requires comprehensive long range plans that will consume significant financial resources. For permittees to achieve this we ask that the following critical changes are included:

C.3. – San Pablo – #3 – STL

- The draft Tentative Order requires all permittees to assess each planned infrastructure project and add Green Infrastructure features where feasible. *We ask that permit language* is *clarified to allow permittees to analyze and consider factors such as: grading and drainage, pollutant loading associated with adjacent land use, use of available space within the project area, condition of existing infrastructure and potential funding to support LID elements.*

13831 San Pablo Avenue, Buildmg "I • San Pablo, CA 94806

Main:

510-2155-3000

-

Direct

510-2155-3000

I

-

Fax:

510-2155-30

II

www.S

C.3. – San Pablo – #4 – STL

- The draft Tentative Order requires staff to develop and have council approve a new Green Infrastructure Framework within one year of the permits' effective date. *This is a very short timeframe to coordinate and educate upper level staff and elected officials, prepare the frameworks,resource planning and accommodate lead times for bringing the framework to governing bodies. We ask that this timeframe is extended by 9 months.*

C.12. – San Pablo – #5 – STL

Considerable time and effort has been spent discussing how to reduce level of pollutant of concern flowing into our waterways, pC1rticulflrly PCBs. Failure to achieve the reductions specified in MRP 2.0 could result in our City being held in noncompliance. However, as drafted, MRP 2.0 provides no clear path for permittee to avoid noncompliance. Some examples include:

C.12. – San Pablo – #6 – STL

- The draft Tentative Order mandates achieving specified reductions in the total quantity of PCBs discharged from municipal storm drains. A major means of achieving these reductions is through removal of PCBs during building demolitions. However this fails to acknowledge that permittees have no control over timing of when properties redevelop.
  We ask that development of a program to control PCBs during building demolitions, rather than applying controls to a specified number of buildings demolished, should represent compliance with this requirement.

C.12. – San Pablo – #7 – STL

- The draft Tentative Order include (in the Fact Sheet) an incomplete method to achieve stipulated reduction credits for each building demolished with PCB controls, for each redeveloped site with new bioretention facilities, and for finding and abating concentrated sources of PCBs. Permittees can't guarantee that they will find PCBs and be able to abate them. We *ask that development of a program to systematically identify and review potential sources, and refer them to appropriate agencies for abatement, be the basis for credit toward compliance.*

C.12. – San Pablo – #8– STL

- The draft Tentative Order allows only four {4) months after Permit adoption for permittees to submit a more complete "measurement and estimation methodology and rationale" for stipulating PCB reduction credits. *We ask that BASMAA's PCBs programs accounting methodology be finalized, incorporated into the permit, and then used to calculate PCBs load reductions during permittee reporting.*

C.12. – San Pablo – #9 – STL

- Water Board staff has stated the threat of noncompliance is intended to strongly encourage permittees to find and abate hidden PCBs, and that Water Board staff would use "enforcement discretion" if and when permittees are unable to meet the mandated PCB load reductions. From a municipal government perspective, new financial and staffing commitments must be based on agreed upon goals and objectives. *We ask that the load reduction performance criteria not be the point of compliance. Most factors that are key to meeting the load reduction performance criteria are not within permittee control (e.g., extent of source properties that will be found, building demolition rates, and redevelopment rates), making achievement of*

compliance uncertain.

General – San Pablo – #10 – STL

The major new mandates in the Tentative Order will require a significant, sustained effort to implement, absent any new or additional funding source. The attached table summarizes adjustments that have been presented to Water Board staff that would improve program efficiencies or eliminate certain less beneficial tasks. We look forward to resolution of the remaining issues and to implementing MRP 2.0.

Sincerely,

Kathy Chao Rothberg
Mayor, City of San Pablo

Attachment:

- Requested Adjustment to Improve Efficiency in the Municipal Regional Permit, Including Elimination of "Less Beneficial Tasks"

Requested Adjustments to Improve Efficiency in the Municipal Regional Permit, Including Elimination of "Less Beneficial Tasks"

	Provision	Task or Requirement	Requested Adjustments
C.2.f.– San Pablo – #11 – STL	C.2.f.	Corporation Yard inspection requirements.	Eliminate this requirement, as it duplicates the requirements for inspections already included in the Stormwater Pollution Prevention Plans (SWPPPs) for these same facilities.
C.3.b.i.– San Pablo – #12 – STL	C.3.b.i.	Eliminates grandfathering of Regulated Projects with vested tentative maps approved prior to advent of C.3 requirements	Allow municipalities flexibility to require these applicants to implement stormwater treatment requirements only to the extent not in conflict with state law and existing development agreements
C.3.b.ii.(4) – San Pablo – #13 – STL	C.3.b.ii.(4)	Certain Roads Projects are Regulated Projects under Provision C.3	Delete this requirement as the intent is superseded by the Green Infrastructure requirements in Provision C.3.j.
C.3.b.ii.(1)(c) – San Pablo – #14 – STL	C.3.b.ii.(1)(c)	Requires projects where 50% or more of existing impervious area is redeveloped to provide treatment for entire area.	Delete this requirement as the intent is superseded by the Green Infrastructure requirements in Provision C.3.j.
C.3.e.ii. – San Pablo – #15 – STL	C.3.e.ii.	Special Projects—allowance to use non-LID treatment on smart growth development projects that meet specified location and gross density criteria.	To avoid a disincentive for including pedestrian amenities, allow public plazas to be omitted from calculation of project gross density.
C.3.e.v.(1) – San Pablo – #16 – STL	C.3.e.v.(1)	Requires Permittees to track Special Projects that have been identified (application submitted) but not approved.	Delete this requirement, as the number of projects, and amount of impervious area, has proven to be small.
C.3.e.v.(2) – San Pablo – #17 – STL	C.3.e.v.(2)	Requires Permittees to conduct and document an analysis of the feasibility of LID treatment for Special Projects.	Delete this requirement, as it creates considerable additional effort for applicants and Permittees without any expected water-quality benefit.
C.3.g.vii. – San Pablo – #18 – STL	C.3.g.vii.	Requires Contra Costa municipalities (through CCCWP) to submit a technical report describing how Contra Costa will implement current Permit hydromodification management requirements.	Delete requirement to submit a technical report. CCCWP submitted a 2013 report on the results of a multi-year monitoring study that concluded current policies and criteria meet these requirements.
C.3.g.iv. – San Pablo – #19 – STL	C.3.g.iv.	Allows Permittees to propose a different method for sizing hydromodification management facilities that is not biased against Low Impact Development, but requires a Permit amendment before using the method.	Delete requirement for a Permit amendment before the method is used. Note: the Fact Sheet accompanying the Tentative Order states that Water Board Executive Officer approval would be required, not a Permit amendment.

	Provision	Task or Requirement	Requested Adjustments
C.3.h.ii.(6)(b) – San Pablo – #20 – STL	C.3.h.ii.(6)(b) and (c)	Requires Permittees to inspect 20% of Regulated Projects annually, as well as every project at least once every 5 years.	Delete the annual requirement to allow flexibility in scheduling inspections.
C.3.j.i.(1) – San Pablo – #21 – STL	C.3.j.i.(1)	Requires each Permittee to prepare and implement a Green Infrastructure Plan (framework for Plan due in 12 months; Plan due in 2019)	Extend the time for submittal of the required framework to a minimum of 20 months.
C.4., C.5., and C.6. – San Pablo – #22 – STL	C.4, C.5, C.6	For inspections of businesses and construction sites, and for response to illicit discharges, requires that corrective actions of "actual or potential non- stormwater discharges" be implemented before the next rain event, but no longer than 10 business days after potential or actual non-stormwater discharges are discovered.	Delete references that specify types of corrective actions and timeframes for implementation, as these create a disincentive for identifying minor problems and create unproductive administrative work.
C.5.e.iii. – San Pablo – #23 – STL	C.5.e.iii.	Requires Permittees to report a list of mobile cleaners operating in their jurisdiction.	Delete, as this information is unavailable.
C.5.e.iii. – San Pablo – #24 – STL	C.5.e.iii.	Requires Permittees to report a list and summary of specific outreach events and education conducted to the different types of mobile businesses	Delete and clarify that requirements to inspect mobile businesses and abate discharges is covered by existing requirements elsewhere in Provisions C.4 and C.5.
C.7.a. – San Pablo – #25 – STL	C.7.a.	Permittees are required to mark and maintain "no dumping" markings on storm drain inlets.	Move this task to Provision C.2.
C.7.b. – San Pablo – #26 – STL	C.7.b.	Requires Permittees to participate in or contribute to "advertising" campaigns on specified subjects and assess results.	Change "advertising" to "outreach" to make explicit that a variety of methods, including social media, may be used. Delete references to specific subjects. Allow more flexibility.
C.9.c. – San Pablo – #27 – STL	C.9.c.	Requires Permittees to observe pesticide applications by their contractors.	Delete requirement.
C.10.a.i.a. – San Pablo – #28 – STL	C.10.a.i.a.	Requires Permittees to achieve a 70% load reduction by July 1, 2017	Extend this compliance date to 2018.
C.10.a.ii.b. – San Pablo – #29 – STL	C.10.a.ii.b.	Requires Permittees to ensure private properties plumbed directly to municipal storm drains are equipped with full trash capture devices or to verify "low" trash generation rate. Requires Permittees to investigate and map these properties.	Delete the mapping requirement and integrate inspections and enforcement into Provision C.4 (Commercial and Industrial Inspections).

	Provision	Task or Requirement	Requested Adjustments
C.10.b.1.a. – San Pablo – #30– STL	C.10.b.1.a.	Specifies maintenance frequencies for full trash capture devices based on trash generation rates.	Set minimum frequency of 1x/year for all devices, to be adjusted based on maintenance experience. Required maintenance frequency is determined mostly by amount of leaf litter and type of device.
C.10.b1.c. – San Pablo – #31 – STL	C.10.b.1.c.	Requires Permittees to certify that full trash capture systems are maintained to meet standard.	State that systems are maintained, and maintenance program is designed to meet standard.
C.10.b.iv. – San Pablo – #32 – STL	C.10.b.iv.	Allows a credit of up to 5% toward trash reduction requirement for source control actions such as product bans.	Increase maximum to 20% to fully credit existing product bans and to create incentive for future source control actions.
C.10.e.i. – San Pablo – #33 – STL	C.10.e.i.	Creates a formula for crediting trash collected during additional creek and shoreline cleanups toward trash reduction requirement—at a 1:10 ratio, with a 5% maximum credit.	Make the ratio 1:3 and increase maximum credit to 10%.
C.10.e. – San Pablo – #34 – STL	C.10.e.	Credits on-land cleanups and litter reduction only if visual assessments show a categorical change (e.g., from “very high” to “high” trash)	Allow interim credit for demonstrated actions intended to achieve categorical change.
C.10.a.iii. – San Pablo – #35 – STL	C.10.a.iii.	Requires bioretention facilities to be equipped with a screen to qualify as full-trash-capture facilities.	Specify that these facilities qualify as full trash capture. Screens could cause flooding.
C.10.b.iv. – San Pablo – #36 – STL	C.10.b.iv.	Requires observations of creeks and shorelines to determine whether trash control actions have prevented trash from discharging to receiving waters.	Restate purpose of observations, as it is not possible to determine that trash originated from storm drains.
C.10.e.ii. – San Pablo – #37 – STL	C.10.e.ii.	Provides 1:10 ratio up to 10% maximum credit for actions to reduce direct discharge of trash (e.g. dumping, encampments).	Increase ratio to 1:3, with no maximum, as in some locations this is the predominant source of trash.
C.10.f.ii. – San Pablo – #38 – STL	C.10.f.ii.	Produce an updated trash generation map each year.	Tie updated maps to compliance dates (for 70% and 100%).

CITY OF SAN RAMON

2226 CAMINO RAMON
SAN RAMON, CALIFORNIA 94583
PHONE: (925) 973-2500
www.sanramon.ca.gov

July 3, 2015

Bruce Wolfe, Executive Officer
California Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay St.
Oakland, CA 94612

Via email to: mrp.reissuancc@waterboards.ca.gov

Subject: Opposition to the Tentative Order Reissuing the Municipal Regional Stonnwater Permit (MRP 2.0)

Dear Mr. Wolfe and Members of the Board:

Thank you for the opportunity to comment on the Tentative Order Reissuing the Municipal Regional Stormwater Permit (MRP 2.0.) The City of San Ramon continues to support the Water Board's objectives of reducing stormwater pollution and protecting our local creeks, the delta and San Francisco Bay.

General – San Ramon #1 – STL

For the past two years, representatives from Contra Costa municipalities, along with a consortium of Bay Area agencies and BASMAA, have been engaged in an ongoing dialogue with your staff regarding: experience gained and lessons learned from the current MRP; how to apply that experience toward maximizing the effectiveness of MRP 2.0, and ensuring that the requirements contained in MRP 2.0 provide for a clear path to compliance.

This process generated many new ideas and approaches that build upon experience gained and identify how to expand upon and enhance our stormwater pollution prevention efforts. It also advocated consolidating or eliminating "less beneficial tasks" in the permit, extending implementation dates, reducing reporting, and adjusting ongoing tasks to reduce effort while maintaining effectiveness in protecting water quality.

CITY COUNCIL: 973-2530
CITY MANAGER: 973-2530
CITY CLERK: 973-2500
ADMINISTRATIVE SERVICES: 973-2500
PLANNING SERVICES: 973-2670
POLICE SERVICES: 973-2700
PARKS&.. COMMUNITY SERVICES: 973-3200
ECONOMIC DEVELOPMENT: 973-2554

This approach acknowledges the reality that new or additional funding sources required to implement the new and expanded requirements contained in MRP 2.0 have yet to be identified; and, advocates allocating limited resources in ways that would focus upon, and maximize effectiveness of the major new and expanded mandates.

Despite the extensive effort, few of these ideas were carried forward into MRP 2.0 Therefore, the City of San Ramon opposes MRP 2.0 as it is currently drafted; asks that your Board consider the following comments, and direct Water Board staff to work with permittees to revise the Tentative Order.

C.3. – San Ramon #2 – STL

Major New and Expanded Mandates Should Be Offset by Eliminating Less Beneficial Tasks

The draft Tentative Order includes a new mandate to develop Green Infrastructure Plans. This coordinated, multi-year effort represents a significant paradigm shift toward developing comprehensive long range plans that will significantly reduce the amounts of urban runoff pollutants, including the pollutants of concern, flowing into receiving waters. It will also require significant investment on the part of all permittees.

In addition, the draft Tentative Order would require our City to do the following:

C.3. – San Ramon #3 – STL

- Assess each planned infrastructure project and add Green Infrastructure features where feasible;

C.12. – San Ramon #4 – STL

- Plan and implement a program to manage PCB-containing materials in commercial and industrial structures constructed or remodeled between 1950 and 1980 at the time those structures are demolished;

C.10. – San Ramon #5 – STL

- Demonstrate trash load reductions of 70% from 2009 levels-up from the current 40% requirement-by installing full trash capture devices or implementing equivalent trash control measures and evaluating their effectiveness through visual surveys; and

C.10. – San Ramon #6 – STL

- Require private property owners in high-trash and moderate-trash areas to install full trash capture devices or implement equivalent measures.

C.3. – San Ramon #7 – STL

- A framework for GI compliance must be developed and approved by local governing bodies by 12/1/2016. This effectively provides one year for cities to develop a GI plan after MRP 2.0 adoption. A GI plan will likely include adoption of Ordinances, modification to General Plans, and creating new City policies. This is a very short timeframe given the effort needed to coordinate and educate staff and elected officials,

prepare the framework, conduct resource planning, and accommodate lead times to bring elements of the framework to the City Council for adoption. We ask for an extension to the deadline for a range of two to three years after adoption of the permit.

C.3. – San Ramon #8 – STL

- A GI plan for cities must be submitted within two years of the Permit effective date. This will require a review of all CIP projects to determine if and where GI elements can be installed and possible creation of new CIP projects. The plan will include prioritization and mapping of potential and planned projects. This is a very important item that will affect projects within the City for decades. It is critical that it be done carefully and correctly. This will be a major, resource-intensive effort that may not be possible to complete within one year of creation of the framework. We ask for a modification to the deadline for this requirement. Submission of a GI plan by the end of the permit term is a more realistic goal based on the level of effort required, current resources available to municipalities, and importance of this requirement.

C.3. – San Ramon #9 – STL

- The GI plan will also establish a target for the amount of impervious surface to be retrofitted over 5-, 10- , 25-, and 50-year horizons. This will be another resource-intensive effort consisting of calculating surface areas and determining drainage areas that can be treated with devices such as bio-swales and flow-through planters, and then installing them with the projects. We ask for the inclusion of language emphasizing that target levels of replacing impervious surface within a 50-year timeframe may be impeded due to variables including existing age of infrastructure, rate of redevelopment, and available funds for the completion of retrofit projects

These major new mandates will require a significant, sustained effort to implement, absent any new or additional funding source.

General – San Ramon #10 – STL

The attached table summarizes adjustments that have been presented to Water Board staff that would improve program efficiencies or eliminate certain less beneficial tasks. Comprehensive information and rationale has been presented to support these requests. Inclusion of these changes in the MRP 2.0 will allow permittees to focus and apply our limited resources to the major new and expanded mandates, in order to achieve the greatest positive impact.

We request that your staff review the attached table and work with permittee representatives to make most or all of the recommended adjustments to "less beneficial tasks."

C.10. – San Ramon #11 – STL

- Most municipalities, including San Ramon, do not have an accurate inventory of storm drain systems located on private property. In many cases surveys will be required to determine how connections are made. We ask that the requirement to identify private connections to municipal storm drain systems be removed from the permit. This requirement represents a significant amount of field work and

administrative activity not required to manage trash loads on problematic properties as discussed below.

C.10. – San Ramon #12 – STL

- If a property is determined to have a high trash generation rate, the mitigation would include requiring the installation of full trash capture devices on private property which may not be legally feasible. We ask that this requirement be removed from the permit. Corrective actions including expansion of trash enclosures and enforcement actions have been effective tools to address trash load issues on problematic parcels.

C.10. – San Ramon #13 – STL

- Mapping of private property and developing a program for compliance would be a substantial administrative undertaking. We ask that the requirement to map private parcels be removed from the permit. Mitigation of trash issues on private parcels is currently managed through commercial/ industrial inspection programs and code enforcement programs that have proved effective in San Ramon.

C.12. – San Ramon #14 – STL

Permittees Must Have a Clear Path to Compliance

Considerable time and effort has been spent discussing how to reduce levels of pollutants of concern flowing into our waterways, particularly PCBs. Failure to achieve the reductions specified in MRP 2.0 could result in our City /Town/County being held in noncompliance. However, as drafted, MRP 2.0 provides no clear path for permittees to avoid noncompliance. Some examples include:

- The draft Tentative Order mandates achieving specified reductions in the total quantity of PCBs discharged from municipal storm drains. A major means of achieving these reductions is through removal of PCBs during building demolitions. However this fails to acknowledge that permitees have no control over timing of when properties redevelop. *We ask that development of a program to control PCBs during building demolitions, rather than applying controls to a specified number of buildings demolished, should represent compliance with this requirement.*

C.12. – San Ramon #15 – STL

- The Tentative Order includes (in the Fact Sheet) an incomplete method to achieve stipulated reduction credits for each building demolished with PCB controls, for each redeveloped site with new bioretention facilities, and for finding and abating concentrated sources of PCBs. Looking for hidden PCB sources is a good idea, but permittees can't guarantee that they will find them and be able to abate them. *We ask that development of a program to systematically identify and review potential sources, and refer them to appropriate agencies for abatement, be the basis for credit toward compliance.*

C.12. – San Ramon #16 – STL

- The draft Tentative Order allows only four (4) months after Permit adoption for permittees to submit a more complete "measurement and estimation methodology

and rationale" for stipulating PCB reduction credits. *We ask that BASMAA's PCBs programs accounting methodology be finalized, incorporated into the permit, and then used to calculate PCBs load reductions during permittee annual reporting.*

C.12. – San Ramon #17 – STL

- Water Board staff has stated the threat of noncompliance is intended to strongly encourage permittees to find and abate hidden PCBs, and that Water Board staff would use "enforcement discretion" if and when permittees are unable to meet the mandated PCB load reductions. From a municipal government perspective, new financial and staffing commitments must be based on agreed upon goals and objectives, and have well-defined metrics for measuring progress. *We ask that the load reduction performance criteria not be the point of compliance, and that Water Board staff work with permittee representatives to revise the Draft Tentative Order so that it provides a clear and feasible pathway for permittees to attain compliance. Most factors that are key to meeting the load reduction performance criteria are uncertain and many are not within permittee control (e.g., extent of source properties that will be found, building demolition rates, and redevelopment rates), making achievement of compliance uncertain.*

The City of San Ramon appreciates the efforts by your staff to develop permit requirements that are implementable and effective in improving surface water quality- a goal which we share. We look forward to resolution of the remaining issues and to implementing MRP 2.0.

Mayor Bill Clarkson

Attachment: Requested Adjustments

Requested Adjustments to Improve Efficiency in the Municipal Regional Permit, Including Elimination of "Less Beneficial Tasks"

	Provision	Task or Requirement	Requested Adjustments
C.2.f. – San Ramon #18 – STL	C.2.f.	Corporation Yard inspection requirements.	Eliminate this requirement, as it duplicates the requirements for inspections already included in the Stormwater Pollution Prevention Plans (SWPPPs) for these same facilities.
C.3.b.i. – San Ramon #19 – STL	C.3.b.i.	Eliminates grandfathering of Regulated Projects with vested tentative maps approved prior to advent of C.3 requirements	Allow municipalities flexibility to require these applicants to implement stormwater treatment requirements only to the extent not in conflict with state law and existing development agreements
C.3.b.ii.(4) – San Ramon #20 – STL	C.3.b.ii.(4)	Certain Roads Projects are Regulated Projects under Provision C.3	Delete this requirement as the intent is superseded by the Green Infrastructure requirements in Provision C.3.j.
C.3.b.ii.(1)(c) – San Ramon #21 – STL	C.3.b.ii.(1)(c)	Requires projects where 50% or more of existing impervious area is redeveloped to provide treatment for entire area.	Delete this requirement as the intent is superseded by the Green Infrastructure requirements in Provision C.3.j.
C.3.e.ii. – San Ramon #22 – STL	C.3.e.ii.	Special Projects-allowance to use non-LID treatment on smart growth development projects that meet specified location and gross density criteria.	To avoid a disincentive for including pedestrian amenities, allow public plazas to be omitted from calculation of project gross density.
C.3.e.v.(1) – San Ramon #23 – STL	C.3.e.v.(1)	Requires Permittees to track Special Projects that have been identified (application submitted) but not approved.	Delete this requirement, as the number of projects, and amount of impervious area, has proven to be small.
C.3.e.v.(2) – San Ramon #24 – STL	C.3.e.v.(2)	Requires Permittees to conduct and document an analysis of the feasibility of LID treatment for Special Projects.	Delete this requirement, as it creates considerable additional effort for applicants and Permittees without any expected water-quality benefit.
C.3.g.vii. – San Ramon #25 – STL	C.3.g.vii.	Requires Contra Costa municipalities (through CCCWP) to submit a technical report describing how Contra Costa will implement current Permit hydromodification management requirements.	Delete requirement to submit a technical report. CCCWP submitted a 2013 report on the results of a multi-year monitoring study that concluded current policies and criteria meet these requirements.

C.3.g.iv. – San Ramon #26 – STL	C.3.g.iv.	Allows Permittees to propose a different method for sizing hydromodification management facilities that is not biased against Low Impact Development, but requires a Permit amendment before using the method.	Delete requirement for a Permit amendment before the method is used. Note: the Fact Sheet accompanying the Tentative Order states that Water Board Executive Officer approval would be required, not a Permit amendment.
C.3.h.ii.(6)(b)-(c) – San Ramon #27 –	C.3.h.ii.(6)(b)-(c)	Requires Permittees to inspect 20% of Regulated Projects annually, as well as every project at least once every 5 years.	Delete the annual requirement to allow flexibility in scheduling inspections.

	Provision	Task or Requirement	Requested Adjustments
C.3.j.i.(1) – San Ramon #28 – STL	C.3.j.i.(1)	Requires each Permittee to prepare and implement a Green Infrastructure Plan (framework for Plan due in 12 months; Plan due in 2019)	Extend the time for submittal of the required framework to a minimum of 20 months.
C.4., C.5., C.6. – San Ramon #29 – STL	C.4, C.5, C.6	For inspections of businesses and construction sites, and for response to illicit discharges, requires that corrective actions of "actual or potential non-stormwater discharges" be implemented before the next rain event, but no longer than 10 business days after potential or actual non-stormwater discharges are discovered.	Delete references that specify types of corrective actions and timeframes for implementation, as these create a disincentive for identifying minor problems and create unproductive administrative work.
C.5.e.iii. – San Ramon #30 – STL	C.5.e.iii.	Requires Permittees to report a list of mobile cleaners operating in their jurisdiction.	Delete, as this information is unavailable.
C.5.e.iii. – San Ramon #31 – STL	C.5.e.iii.	Requires Permittees to report a list and summary of specific outreach events and education conducted to the different types of mobile businesses	Delete and clarify that requirements to inspect mobile businesses and abate discharges is covered by existing requirements elsewhere in Provisions C.4 and C.5.
C.7.a. – San Ramon #32 – STL	C.7.a.	Permittees are required to mark and maintain "no dumping" markings on storm drain inlets.	Move this task to Provision C.2.
C.7.b. – San Ramon #33 – STL	C.7.b.	Requires Permittees to participate in or contribute to "advertising" campaigns on specified subjects and assess results.	Change "advertising" to "outreach" to make explicit that a variety of methods, including social media, may be used. Delete references to specific subjects. Allow more flexibility.
C.9.c. – San Ramon #34 – STL	C.9.c.	Requires Permittees to observe pesticide applications by their contractors.	Delete requirement.
C.10.a.i.a. – San Ramon #35 – STL	C.10.a.i.a.	Requires Permittees to achieve a 70% load reduction by July 1, 2017	Extend this compliance date to 2018.
C.10.a.ii.b. – San Ramon #36 – STL	C.10.a.ii.b.	Requires Permittees to ensure private properties plumbed directly to municipal storm drains are equipped with full trash capture devices or to verify "low" trash generation rate. Requires Permittees to investigate and map these properties.	Delete the mapping requirement and integrate inspections and enforcement into Provision C.4 (Commercial and Industrial Inspections).

C.10.b.1.a. – San Ramon #37 – STL	C.1O.b.1.a.	Specifies maintenance frequencies for full trash capture devices based on trash generation rates.	Set minimum frequency of 1x/year for all devices, to be adjusted based on maintenance experience. Required maintenance frequency is determined mostly by amount of leaf litter and type of device.

	Provision	Task or Requirement	Requested Adjustments
C.10.b.1.c. – San Ramon #38 – STL	C.1O.b.1.c.	Requires Permittees to certify that full trash capture systems are maintained to meet standard.	State that systems are maintained, and maintenance program is designed to meet standard.
C.10.b.iv. – San Ramon #39 – STL	C.10.b.iv.	Allows a credit of up to 5% toward trash reduction requirement for source control actions such as product bans.	Increase maximum to 20% to fully credit existing product bans and to create incentive for future source control actions.
C.10.e.i. – San Ramon #40 – STL	C.10.e.i.	Creates a formula for crediting trash collected during additional creek and shoreline cleanups toward trash reduction requirement-at a 1:10 ratio, with a 5% maximum credit.	Make the ratio 1:3 and increase maximum credit to 10%.
C.10.e. – San Ramon #41 – STL	C.10.e.	Credits on-land cleanups and litter reduction only if visual assessments show a categorical change (e.g., from "very high" to "high" trash)	Allow interim credit for demonstrated actions intended to achieve categorical change.
C.10.a.iii. – San Ramon #42 – STL	C.10.a.iii.	Requires bioretention facilities to be equipped with a screen to qualify as full-trash-capture facilities.	Specify that these facilities qualify as full trash capture. Screens could cause flooding.
C.10.b.iv. – San Ramon #43 – STL	C.10.b.iv.	Requires observations of creeks and shorelines to determine whether trash control actions have prevented trash from discharging to receiving waters.	Restate purpose of observations, as it is not possible to determine that trash originated from storm drains.
C.10.e.ii. – San Ramon #44 – STL	C.10.e.ii.	Provides 1:10 ratio up to 10% maximum credit for actions to reduce direct discharge of trash (e.g. dumping, encampments).	Increase ratio to 1:3, with no maximum, as in some locations this is the predominant source of trash.
C.10.f.ii. – San Ramon #45 – STL	C.10.f.ii.	Produce an updated trash generation map each year.	Tie updated maps to compliance dates (for 70% and 100%).

County of Santa Clara

Consumer and Environmental Protection Agency

1553 Berger Drive
Building 1
San Jose, CA
95112 (408)
918-4600
www.CEPAS
CC.org

July 9, 2015

Mr. Bruce Wolfe, Executive Officer
San Francisco Bay Region
Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

Subject: County of Santa Clara Comments on Tentative Order for the Reissuance ofthe Municipal Regional Stormwater National Pollutant Discharge Elimination System Permit

Dear Mr. Wolfe:

Thank you for the opportunity to comment on the Tentative Order (TO) for the reissuance of the Municipal Regional Stormwater Permit (MRP) dated May 11, 2015. The comments included herein have been prepared consistent with the direction of the Office of the County Executive.

The County of Santa Clara (County) is a co-permittee of the Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP) and has had a proactive stormwater pollution prevention and control program since the first countywide municipal stormwater permit was adopted in 1990. The County has been actively engaged in implementation of the current MRP, and continues to strive to protect and improve water quality within unincorporated Santa Clara County.

The County appreciates that the Water Board staff has worked closely with MRP stakeholders throughout the process of permit reissuance. However, there remain several areas of the permit that continue to cause concern to the County, and our comments on key areas of concern are as follows:

C.3.j.i. – Santa Clara County #1 - SKM

1. Green Infrastructure (Provision C.3) and PCB and Mercury (C.11/C.12)

The County of Santa Clara objects to certain mandates of the new Provision C.3 Green Infrastructure (GI) requirements. In particular, the County objects to (1) the timeframe for GI planning and

C.11. & C.12.c. – Santa Clara County #2 - SKM the County objects to (2) the method for assessing the County's progress towards meeting PCB and Mercury Load reductions vis-a-vis the GI retrofit projects implemented.

C.3.j., C.11. & C.12.c. – Santa Clara County #3 - SKM

The County provided oral testimony at the June 10, 2015 Water Board Public Workshop regarding:

- The few redevelopment opportunity areas within unincorporated Santa Clara County where private development projects could make significant contributions towards the total area retrofitted with Green Infrastructure.

C.3.j., C.11. & C.12.c. – Santa Clara County #4 - SKM

- The infrastructure managed by the County, such as hillside residential streets, freeway- like expressways and rural and semi-rural parklands may not provide good opportunities for GI retrofit projects, particularly those that would address Mercury and PCB sources as the TO envisions.

C.3.j.i., C.11. & C.12.c. – Santa Clara County #5 - SKM

In addition to the oral testimony given, the County would further note that that the largest County facilities are located within the City of San Jose-not unincorporated Santa Clara County-and the TO provides no guidance as to whether the County or City would be credited for these retrofits. Such guidance is requested. The County believes it should receive credit for these facilities since they are County owned and operated facilities which are oftentimes exempt from the City's building and land use authority.

C.3.j.i. – Santa Clara County #6 - SKM

a. *Green Infrastructure Planning*

Although opportunities are available to integrate GI objectives into the County's various long- range capital and sustainability programs, retrofit projects under those programs would be implemented by the County and not the Water Board. These retrofit projects are projected to be constructed under long-term (e.g. ten year) capital funding cycles, and are further dependent on the availability of funding for long-term maintenance. The timeframes in the TO are simply unrealistic because developing a comprehensive GI Plan requires time and

significant County resources. For example, the GI Plan framework has to be developed and approved by the Board of Supervisors within one year of the Permit effective date, which is unrealistic since numerous County agencies must be involved in evaluation of GI opportunities and amendment of capital plans and programs to include feasible components of Gl. This planning work needs to be completed before consideration of a plan by the Board.

C.3.j.i. – Santa Clara County #7 - SKM

The Tentative Order must be revised to provide two years to complete and obtain governing body approval of the GI framework, and further revised to provide the entire permit term to complete the GI Plan. This will ensure the County and other permittees have the opportunity to conduct a thorough evaluation of GI opportunities; are able to properly vet potential GI projects with implementing departments, taxpayers/residents and elected officials; and have time to develop funding mechanisms to facilitate project implementation. The County does anticipate
that a small number of GI pilot projects could be implemented as part of routine maintenance and rehabilitation projects during the time that a comprehensive GI Plan is being developed.

C12.c. – Santa Clara County #8 - SKM

b. *Green Infrastructure and Mercury and PCB Reductions*

The TO incorrectly assumes reductions in Mercury and PCB loading based on projected rates of land redevelopment and permittee and private sector implementation of GI projects. However, as the Water Board is aware, implementation of the Green Street pilot projects mandated under the current MRP typically took three to five years from project inception to project completion. Consequently, the TO makes unrealistic projections with regard to the rate of GI implementation and "old industrial" land uses that would effectuate GI implementation and corresponding reductions in Mercury and PCBs fails to account for the diversity of land uses and development patterns of the individual permittees, and ignores the key fact that not every permittee has known Mercury and PCB-generating land uses within its jurisdiction.

C.3.j., C.11., &C.12. – Santa Clara County #9 - SKM

The TO imposes a vague and ambiguous path on the County's compliance with both Provision C.3 Green Infrastructure implementation and related C.11 Mercury and C.12 PCB reductions.

2. Trash (Provision C.lO)

The County is diligently implementing the trash reduction measures identified in its February 2014 Long-Term Trash Reduction Plan and Assessment Strategy. To date, the County has spent over $30,000 on small trash capture devices, and has planned for the installation of an additional $1.3 million of trash capture devices over the next three years. The County is spending approximately $450,000 in additional maintenance costs per year for enhanced street sweeping to meet the MRP's trash reduction requirements. The County also spends tens of thousands of

dollars annually collecting and disposing of trash and other debris dumped in the unincorporated area of the South Bay.

Several new requirements in Provision C.10 will impose difficult, infeasible or counter-productive requirements regarding trash reductions. Specific C.10 elements that must be eliminated from the final MRP include:

C.10.a. – Santa Clara County #10 - SKM

Eliminate:

- **Provision C.lO.a (Trash Reduction Requirements).** The TO carries over from the MRP a requirement for a 70% trash load reduction by June 2017. While successfully meeting the requirement for a 40% trash load reduction by 2014, the County gained valuable experience in installing trash capture devices and implementing operational trash controls. Implementation of additional trash reduction actions to achieve the ultimate goal of no trash impairment by 2022 will require significantly more funding than that required for the initial reduction of 40%, and may require the County to try new approaches to successfully meet the 2022 requirements. As such, the 70% reduction by 2017 requirement represents an arbitrary milestone that assumes the implementation of trash reduction actions is linear. This requirement will impair the County's ability to evaluate what trash controls work best, and to adapt its Long-Term Trash Reduction Plan to meet the 2022 requirements in the most cost effective manner. The requirements for a 70% trash load reduction by June 2017 should be eliminated.

C.10.a.ii.b. – Santa Clara County #11 - SKM

Eliminate:

- **Provision C.lO.a.ii.b (Trash Generation Area Management)** requires Permittees to map and assess all private drainages that are 5,000 square feet and greater, determine the level of trash present in these areas, and potentially require installation of trash screens on private storm drain inlets. This will require extensive stafftime to complete mapping that has no apparent value because it does not provide a direct water quality benefit. If the intent of this section is to identify privately-owned properties that are contributing significant amounts of trash to the storm drain system via on-site inlets, then that objective can be addressed through existing commercial and industrial inspection programs. Furthermore, it is questionable whether the County has the legal authority to requirement should be eliminated.

The County requests that the following **changes** be made to the MRP to allow the County and other permittees greater opportunities to meet trash reduction requirements:

C.10.a.iii. – Santa Clara County #12 - SKM

- Both Green Infrastructure and Low Impact Development (LID) stormwater treatment measures should be identified as Full Trash Capture Systems. The TO implies that C.3-compliant LID features would have to be fitted (or retrofitted) with trash capture screens to be considered Full Trash Capture Systems. The TO should be revised to clarify that previously-installed C.3 treatment measures and Green Infrastructure elements are Full Trash Capture Systems.

C.10.e.ii. – Santa Clara County #13 - SKM

- The TO proposes a maximum trash load reduction offset credit of ten percent for direct trash discharge controls. The County regularly removes trash from areas where illegal dumping occurs in or along creeks. Items removed include both large items such as appliances, car parts, furniture, household and commercial trash, and hazardous waste. A substantial amount of trash is prevented from entering local creeks through these efforts, and appropriate offset credits (e.g. 25%) should be given to permittees to encourage the continued investment in direct trash control. The TO should be revised to provide an offset credit of up to 25% with documentation of the direct discharge control.

3. Conclusion

General – Incorporate by reference SCVURPPP's and BASMAA's comments – Santa Clara County #14 - SKM

In addition to the specific comments above, the County incorporates by reference comments submitted by the Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP), and by the Bay Area Stormwater Management Agencies Association (BASMAA).

Si

Amy L. Brown, Director
Consumer and Environmental Protection Agency

July 10, 2015

San Francisco Bay Regional Water Quality Control Board
1515 Clay St
Suite 1400
Oakland, CA 94612

Re: Draft Municipal Regional Stormwater Permit – Section C.10

Dear Chair Young and Board members,

Thank you for the opportunity to comment on Section C.10 of the Draft Municipal Regional Stormwater Permit (MRP). As a stakeholder in this process since 2008 and one of the region's leading advocates on trash reduction in the Bay, we are pleased to see this permit establish a clearer and stronger set of steps toward achieving zero trash. However, we urge the Board to consider the following feedback, focused primarily on the need for more reliable data and reporting, and a more effective pathway to compliance for all permittees.

C.10.a.i. – Save the Bay #1 - DCB
Performance guidelines and mandatory reductions
Failure to meet performance guidelines
Falling short of performance guidelines is an indication that a permittee is not on track to achieving the mandatory reduction. Section C.10.a.i requires permittees that fail to meet performance guidelines to submit plans for meeting subsequent mandatory reductions. These plans should be certified by Water Board staff and should include activities that have a high likelihood of reducing trash; this is not the appropriate opportunity to pilot a new program with uncertain outcomes. The activities we suggest including on the list of acceptable activities that warrant certification include:

- Increased street sweeping
- New Business Improvement Districts or other regular on land clean-up
- Additional full trash capture

C.10 – Save the Bay #2 - DCB

Failure to attain mandatory reductions
27 Bay Area waterways violate Clean Water Act standards for trash and require the development of a TMDL – a designation that was established in 2008. Failure to significantly reduce trash a decade or more after these waterways were placed on the 303(d) list indicates the need for an engineered solution, not simply another plan for attaining compliance. Permittees that fail to meet mandatory reduction milestones should be required to install enough full trash capture to bring them into compliance within the following year. In areas where full trash capture is not possible due to physical barriers, Water Board staff should work with permittees to devise an alternative approach that is full trash capture equivalent.

1330 Broadway, Suite 1800 Oakland CA 94612 510.463.6850 www.saveSFbay.org

C.10 – Save the Bay #3 - DCB

Receiving water monitoring

Although we are pleased to see receiving water monitoring requirements in addition to on-land visual inspections, we reiterate the recommendations from our Administrative Draft comments to more clearly define what activities and reporting are required of permittees. Tracking trash conditions in and adjacent to waterways, in addition to on-land assessments, is essential to meeting the zero trash mandate established by the Board. While the *Tracking California's Trash* project is developing methods for in-stream trash flux monitoring, we urge the Board to require monitoring of creek banks and shorelines as soon as possible and to incorporate in-stream monitoring when those methods are finalized. Existing methods like the Rapid Trash Assessment can be modified to more efficiently and accurately characterize trash conditions, and to identify potential sources.

We urge Water Board staff to work with regional experts, permittees, and stakeholders to develop these methods within the next several months so that monitoring can begin within the next year. This information will allow permittees to adjust their trash management strategies to focus on the most persistent and dominant sources, which will be necessary to achieve zero trash.

C.10 – Save the Bay #4 - DCB

On-land visual inspections

Although the guidance for on-land visual inspections has improved from the administrative draft, the draft tentative order lacks a frequency standard for on-land visual inspections. Save The Bay recommends a requirement that permittees conduct visual inspections *no less than* twice per quarter in all medium, high, and very high trash generation areas, and that these inspections are conducted at the same locations each time.

C.10 – Save the Bay #5 - DCB

Alternative to visual inspections

We also support providing permittees with an alternative to on-land visual assessments that focuses on storm drain outfall monitoring. By measuring trash flowing directly out of the MS4, confusion with loading from direct discharges and other sources is eliminated. We recommend allowing permittees to develop and submit detailed protocols, which can be used only following Executive Officer approval.

C.10 – Save the Bay #6 - DCB

Until such methods are certified, permittees should be required to complete visual assessments in accordance with the requirements outlined in that section of the permit. Storm drain outfall monitoring protocols should specify:

- The proportion of outfalls that must be surveyed
- Required frequency of assessment
- Data that must be included in submittals.

C.10 – Save the Bay #7 - DCB

Source control

According to trash characterization studies from 2012, plastics comprise 65-75% of trash. Even with plastic bag and Styrofoam foodware bans in place throughout much of the Bay Area, a large portion of trash in waterways continues to be made up of single-use plastic products and packaging; eliminating these items at the source may be the most effective way to prevent them from polluting local waterways and the Bay. To incentivize future innovation around source control, we recommend allowing up to 15% credit for activities supported by consistent data demonstrating measurable reductions.

C.10 – Save the Bay #8 - DCB

Trash characterization

Source control can only be effective if we understand the types of trash polluting our waterways. Unfortunately, the sources for this data are few and far between. We recommend requiring that both on-land and hot spot assessments include a list of dominant trash types. Photographs from visual assessments can be easily assessed to identify trash types. Staff and volunteers conducting cleanups can also make note of this information on data sheets, where they are already recording the volume of trash removed.

C.10 – Save the Bay #9 - DCB

Direct discharge control credit

Save The Bay supports the submission of comprehensive plans from permittees seeking additional trash load offsets for direct discharge controls. In addition to the information currently required by section C.10.e.ii, we recommend that permittees submit:

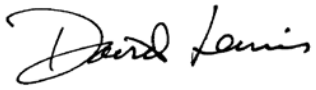
- An established funding and staffing plan
- Description of interdepartmental and/or public-private, public-nonprofit collaborations

C.10 – Save the Bay #10 - DCB

Finally, we once again urge the Water Board to work with relevant stakeholders and agencies to develop a web-based database for permittees to submit data from trash capture device maintenance, visual assessments, receiving water monitoring, trash hot spot clean-up, and other trash reduction activities. This would not only reduce the reporting burden for permittees, but would streamline compliance evaluation for staff.

We appreciate your consideration of our comments and your continued leadership to place Bay Area communities on a clear path to zero trash.

Sincerely,



David Lewis
Executive Director

Santa Clara Valley
Urban Runoff
Pollution Prevention Program

Campbell • Cupertino • Los Altos • Los Altos Hills • Los Gatos • Milpitas • Monte Sereno • Mountain View • Palo Alto
San Jose • Santa Clara • Saratoga • Sunnyvale • Santa Clara County • Santa Clara Valley Water District

July 10, 2015

Mr. Bruce Wolfe
Executive Officer
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

Subject: Comments from the Santa Clara Valley Urban Runoff Pollution Prevention Program on the Municipal Regional Permit (MRP) Tentative Order – May 11, 2015

Dear Mr. Wolfe:

Thank you for the opportunity to submit comments on the Regional Water Board's Revised Municipal Regional Permit (MRP or Permit) Tentative Order dated May 11, 2015. These comments are submitted by the Santa Clara Valley Urban Runoff Pollution Prevention Program (Santa Clara Program) on behalf of its 15
local government member agencies (Co-permittees).[1] The Santa Clara Program's key concerns and issues are summarized in this letter. More detailed comments and requested revisions on each section of the Tentative Order are contained in Attachment A. In addition, Program legal counsel has submitted comments and recommendations on behalf of the Santa Clara Program and Co-permittees and these are incorporated by reference as part of this letter.[2]

General – SCVURPPP - #1 - DCB
Accomplishments and Progress Towards Improved Water Quality

The Santa Clara Program has focused on local and regional challenges and opportunities for improving the quality of stormwater that flows to our creeks and the San Francisco Bay for over 20 years. In that time, we have received numerous local and national awards for our leadership and efforts to manage and minimize stormwater related impacts on water quality.[3]

During the implementation of the MRP over the last five years, we have continued to take a leadership role throughout the region on developing and implementing water quality monitoring programs, guiding the successful implementation of pilot-scale pollutant control measures in the Santa Clara Valley, and optimizing "core" Co-permittee programs (e.g., industrial/commercial facility inspection and municipal operations programs) for stormwater quality benefit. The Program and Co-permittee implementation of the MRP has yielded the following outcomes:

[1] The Santa Clara Program's Co-pemittees are: Campbell, Cupertino, Los Altos, Los Altos Hills, Los Gatos, Milpitas, Monte Sereno, Mountain View, Palo Alto, San Jose, Santa Clara, Saratoga, Sunnyvale, Santa Clara County, and the Santa Clara Valley Water District.
[2] You will also be receiving a set of legal comments for the Santa Clara Program under separate cover (from Robert Falk of Morrison & Foerster LLP). In addition, the Santa Clara Program supports and incorporates by reference the comments submitted by the Bay Area
Stormwater Management Agencies Association (BASMAA).
[3] Including two U.S. Environmental Protection Agency (EPA) *first place* National Stormwater Management Awards (one in 1993 and the second in 2006); Three awards from the California Stormwater Quality Association (2008 - for our trash management guidebook called

1021 S. Wolfe Road., Suite 185 • Sunnyvale, CA 94086 • tel: (408) 720-8833 • fax: (408) 720-8812
1410 Jackson Street • Oakland, CA 94612 • tel: (510) 832-2852 • fax: (510) 832-2856
1-800-794-2482

- **PCB and Mercury Control Programs** – The Santa Clara Program and Co-permittees have instituted numerous actions to reduce the impacts of PCBs and mercury, including the identification of source properties through the collection of hundreds of water and sediment samples for PCB and mercury analyses and inspections of those high priority facilities; conducting pilot projects to evaluate the costs and benefits of enhancing street sweeping and storm drain pipe-flushing as control measures; evaluating the effectiveness and practicality of a diverting stormwater to the sanitary sewer system; installing and monitoring the effectiveness of a stormwater treatment device directly downstream of PCB and mercury source properties; and conducting outreach to those at risk of eating Bay fish contaminated with these legacy contaminants.
- **Trash Reduction Programs**– Co-permittees have collectively reduced over 40% of the trash in stormwater discharges to-date, via the installation of over 700 trash capture systems that collectively treat over 4,500 acres of urban land area (i.e., more than double the area required for treatment by the MRP), the adoption of municipal ordinances prohibiting the distribution of litter-prone items, the enhancement of institutional controls such as street sweeping and on-land cleanups, and the removal of over 80,000 cubic yards of litter and larger items from Santa Clara creeks and shorelines. Additionally, the Santa Clara Program developed the On-land Trash Visual Assessment Protocol now being used by many municipalities throughout the region, and is currently implementing a Trash Assessment Strategy through which over 1,500 assessments have been conducted to-date to evaluate reductions in trash generation.
- **New and Redevelopment Controls** – Santa Clara Valley Co-permittees continued to effectively implement MRP provision C.3 requirements for private and public development projects. Numerous stormwater treatment facilities have been constructed as a result of these actions. Additionally, Co-permittees implemented three green street pilot projects consistent with the permit. These projects serve as examples for future efforts to better integrate green infrastructure concepts into the urban landscape over the next few decades.

Additionally, Co-permittees continued to effectively implement "core" program elements and a comprehensive creek/river water quality monitoring program consistent with the requirements in the MRP, while actively participating via local agency and Program staff and providing financial contributions to the San Francisco Bay Regional Monitoring Program (RMP) that is designed to assess water quality in the Bay and evaluate trends over time.

General – SCVURPPP - #2 - DCB

Collaboration with Water Board Staff

From the start of the MRP reissuance process, the Santa Clara Program and its Co-permittees have supported the opportunity to achieve consistency in municipal performance throughout the Bay Area and aimed to assist Water Board staff with the reissuance of the MRP in a timely and efficient manner. Based on many discussions held between Program, Co-permittee, and Water Board staff between summer of 2013 and the release of the MRP 2.0 Administrative Draft in spring 2015[4], we understood that in MRP 2.0 Water Board staff hoped to address the unintended consequences realized during the implementation of the current MRP, provide a necessary balance between flexibility and enforceability, and acknowledge the uncertainties and

limited control that Co-permittees have with regard to the effectiveness and the pace at which pollutant reductions are realized. However, because we believed that significant issues remained in the language included in the Administrative Draft, we provided substantial technical comments to the Water Board in March 2015 in collaboration with other Phase I stormwater programs.[5]

[4] Meeting summaries from MRP 2.0 Steering Committee meetings that included Water Board, Co-permittee and Program staff are include as Attachment B.
[5] The BASMAA comment letter includes early input on the Administrative Draft provided by the Santa Clara Program in collaboration with other Phase I stormwater programs.

General – SCVURPPP - #3 - DCB

Since that time, the Santa Clara Program staff and Co-permittees have worked with Water Board staff on incorporating our suggested revisions and requested that the Tentative Order focus on the following priorities:

- Continue to achieve consistent implementation across the Bay Area with respect to "core" municipal stormwater management program elements (i.e., provisions C.2 to C.7), with only limited prescriptiveness so that unnecessary and costly changes to Co-permittee programs can be avoided;
- Eliminating less useful monitoring requirements (provision C.8), creating flexibility in the types of pollutant of concern monitoring conducted, and linking these requirements to relevant management questions associated with pollutant sources and the status and trends of water quality in receiving waters and stormwater discharges;
- Developing clear and feasible requirements for PCB and mercury control programs that incorporate the high degree of uncertainty associated with the pollutants, and provide Co-permittees with a clear path to compliance that includes the implementation of controls that are designed to reduce pollutants to a desired achievable level; and
- Including requirements for trash control programs that clearly define the overall goal and the means by which compliance will be determined, while providing value for all actions that clearly have an environmental benefit related to this pollutant.

Our review of the Tentative Order indicates that Water Board staff has made some modifications and improvements relative to the Administrative Draft in terms of the above-stated priorities. We particularly appreciate that staff has made significant changes to the trash section to incorporate clearer processes by which compliance with load reduction goals will be evaluated. However, our previous concerns regarding other Permit provisions (especially those addressing mercury and PCB-specific programs) have not yet been adequately addressed.

General – SCVURPPP - #4 - DCB

Specifically, a clear and practicable path to compliance which Co-permittees can plan for and implement regarding future PCB and mercury control actions does not exist.

Summary of High Priority Remaining Issues and Requested Revisions

The Santa Clara Program and its Co-permittees intend to remain a recognized, award-winning "can do" leader in municipal stormwater management. However, serious issues remain with the current version of the Tentative Order. These include the following high priority issues[6] that must be addressed to expedite the adoption of a Tentative Order that moves the Bay Area stormwater program forward and behind which the Santa Clara Program and its Co-permittees can adamantly support. If we can agree on how to effectively resolve the issues contained in Attachment A, we believe we will be able to expeditiously bring this process to a successful conclusion.

C.11 and C.12 – SCVURPPP - #5 - DCB

- **PCBs and Mercury** – PCBs and mercury are a highly persistent legacy pollutant that have been in San Francisco Bay for decades and likely will remain in the Bay for decades to come. Over the past 15 years, Bay Area municipalities in collaboration with the Regional Monitoring Program (RMP) have conducted extensive field studies and gained considerable knowledge about the distribution of PCBs in the Bay Area environment. Due to widespread uses and lack of regulation over many decades (i.e., 1930s – 1970s), this pollutant was widely dispersed in soils and sediments throughout the urban landscape draining to the Bay. Similarly, PCBs are widely dispersed within the Bay's sediments.

  Over the past 15 years, Bay Area municipalities have also made a great deal of progress towards understanding the types of control measures that are most cost-effective in reducing PCBs discharges in stormwater. There are generally four types of actions that may continue to reduce PCBs and mercury in stormwater: 1) Source property identification and abatement; 2) stormwater

[6] The following provides a somewhat more detailed summary of our key concerns with the Tentative Order. Our more specific comments are contained in Attachment A and will help explain the reasoning behind the suggested edits that were previously submitted to Water Board staff as early input (see BASMAA comment letter on Tentative Order).

treatment on private properties as they are redeveloped; 3) Retrofitting in public rights-of-way with landscape-based treatment structures; and 4) Reduction of future contamination as buildings containing PCBs that were constructed during the 1950s - 1970s are demolished. Of these actions, municipalities have a lack of control over the timing and extent of redevelopment and building demolition, and there is a high level of uncertainty about the number of additional "hot spots" that can be identified. Additionally, retrofitting public right-of-ways for stormwater control takes considerable time and resources that are currently not available to municipalities.

The lack of control over the pace of actions creates a high level of uncertainty in whether cities and counties can demonstrate a total cumulative Bay Area-wide PCBs load reduction of 3 kg/year over the permit term, and subsequently comply with the permit. Therefore, the Santa Clara Program's overarching concern is that Provision C.11 and C.12 continue to fall well short of providing Permittees with a clear and feasible pathway to attaining compliance with this load reduction requirement.

C.11 and C.12 – SCVURPPP - #6 - DCB

Additionally, at the July 8, 2015 Regional Water Board hearing, Board members acknowledged that given the very high costs and difficulties to address PCBs, trash controls should be given priority during the permit term. This is also consistent with the message from the State Water Resources Control Board via the recently adopted trash amendments. Based on this direction from Regional Board members, requirements currently included in the PCB provision should reduced and the schedule for implementation of controls should expanded to provide additional time to allow Permittees to focus on trash controls during this permit term. Regional Water Board members also noted that the general approach in the permit is to require implementation of BMPs and pollutant controls, and that the requirements in the permit should be predictable and provide a clear/concise articulation of the path to compliance.

We therefore request that the Tentative Order be revised so that: 1) the load reduction performance criteria are not the point of compliance and compliance be based upon implementing PCBs control programs designed to achieve a load reduction target (such as a Numeric Action Level or similar mechanism for triggering requirements for additional action and reporting), based on an interim accounting method included in its entirety in the permit and applicable for at least the term of the permit;

C.11 and C.12 – SCVURPPP - #7 - DCB

and 2) implementation schedules be expanded to allow Co-permittees to focus on higher priority water quality controls as deemed by the Regional Board.

C.3.j. – SCVURPPP - #8 - DCB

- **Green Infrastructure** - The C.3.j. Green Infrastructure provision will be one of the most challenging portions of C.3 to implement and, similar to Provisions C.11 and C.12, has a significant level of uncertainty in terms of what will constitute compliance. Developing a comprehensive Green Infrastructure Plan will take time and significant resources, and the timeframes in the Tentative Order for completion of the Plan are unrealistic. Specifically, completing a Green Infrastructure Plan will be a complex and time-intensive process which will require a great deal of municipal interdepartmental coordination and should be provided the entire permit term to complete. Additionally, the Tentative Order requires early implementation of green infrastructure, focused on identifying and implementing public projects that have potential for including "green" (LID) measures within the permit term. Implementation (i.e., design and construction) during the Permit term of green infrastructure projects that are not already planned and funded will be very challenging for most Permittees.

  We request that Water Board staff work with Permittees to make this section more consistent with C.11 and C.12, and more flexible for different types and sizes of Permittees to comply, and allow more realistic timeframes for compliance. Efforts during the MRP 2.0 term should focus on development of long-term Green Infrastructure Plans and continue to leverage opportunistic implementation of green infrastructure projects where feasible.

C.10. – SCVURPPP - #9 - DCB

- **Trash** – Although the Trash provision provides a clearer path toward compliance with trash load reduction targets than the previous permit, there are a number of remaining issues that need to be addressed. The timeframe for achieving 70% reduction should be extended due to the fact that reductions become increasingly more challenging the closer Permittees move towards the trash reduction goal of "no adverse impacts."

C.10. – SCVURPPP - #9 - DCB

Additionally, we appreciate the acknowledgement that trash source controls, creek and shoreline cleanups, and direct discharge control programs are important pieces in solving trash impacts to water quality. However, the maximum value allowed for each action is arbitrary and inconsistent with our current knowledge of the trash reduction benefits associated with these actions/programs. Maximum reduction values associated with these actions should therefore be increased.

C.10. – SCVURPPP - #10 - DCB

Lastly, receiving water observations required downstream from trash generation areas converted to "low" trash generation insinuates that compliance associated with reductions of trash in municipal stormwater discharges will be judged via the results of these observations. This is confusing and contradictory, because the process to judge compliance with stormwater reductions is outlined in the TO as full capture, on-land visual assessments, source control values, and offsets associated with cleanups; not using receiving water observations. That said, we recognize that receiving water observations may be helpful with the adaptive management of stormwater and other trash control programs if designed to address specific management questions and conducted in a cost-effective manner that does not divert resources away from trash management. However, methods to conduct cost-effective observations have yet to be developed.

General – SCVURPPP - #11 - DCB

In sum, the Santa Clara Program believes that the Tentative Order is an improvement over the Administrative Draft and we appreciate Water Board staff's attention to our previously submitted comments. However, the Tentative Order still includes many requirements that need further refinement prior to adoption. The requested revisions included in our comments are pragmatic improvements that will create a more feasible permit that focuses limited available municipal stormwater permitting resources on tasks that are most cost-effective in terms of increased water quality benefits. In addition, the recommended revisions provide Co-permittees with a clearer path towards compliance that while protecting and improving water quality avoid the risk of inappropriate subjective compliance evaluations and have the potential to minimize unnecessary third-party law suits that do nothing to improve stormwater quality.

We appreciate your consideration of these comments and look forward to your response.

Very truly yours,

Adam W. Olivieri, Dr. PH, P.E.
Program Manager

Attachment (A) –Santa Clara Program's Detailed Comments on the MRP Tentative Order
Attachment (B) – MRP 2.0 Steering Committee meeting summaries

cc: SCVURPPP Management Committee
BASMAA Executive Board Robert Falk,
Morrison Foerster Tom Mumley and
Dale Bowyer, RWQCB

SCVURPPP Comments on MRP Tentative Order, dated May 11, 2015

Attachment A
SCVURPPP Detailed Major Comments on MRP Tentative Order (dated May 11, 2015)

General Comment – Permit Effective Date and Annual Reporting – SCVURPPP - #12 - DCB

- **Issue:** The proposed effective date in the Tentative Order (TO) is December 1, 2015. This creates a situation in which the 2016 Annual Report (for FY 15-16) will cover the end of the current permit and the beginning of the new permit. Water Board staff has indicated that it will work with the Permittees on an Annual Report format that addresses this transition. However, changes to data collection and tracking methods in certain provisions will be difficult to implement in the middle of the fiscal year. These changes include, but are not limited to, the following:
    - C.3.h.ii.(6) – changes in O&M Inspection Plan requirements to track number of sites inspected instead of number of BMPs, addition of requirements to inspect pervious pavement systems, and associated changes to tracking databases;
    - C.4.d.iii.(3) (Industrial/Commercial Business Inspections) and C.6.e.iii.(2)(g) (Construction Site Inspections) – requirements to shift from tracking number of violations to number of enforcement actions, and associated changes to tracking databases.

  Requested Revision: Change the effective date for these and other new provisions related to data collection and tracking to July 1, 2016, so that Permittees have time to adjust data collection, tracking and reporting methods, and so that the data collected within a given fiscal year will be consistent.

C.2. Municipal Operations

C.2.d.ii - Stormwater Pump Stations– SCVURPPP - #13 - DCB

- **Issue**: Although the Tentative Order does not include the explicit requirements for monitoring pump station discharges in the current permit, it maintained and strengthened the language regarding dissolved oxygen in discharges. There is no way to know whether the discharges are above 3 mg/L "at all times" without continuous monitoring, which is far more burdensome than the previous language.

  Requested Revision: Remove specific language regarding the 3 mg/L dissolved oxygen trigger. Alternatively, revise language to read, "Upon becoming aware that a pump station discharge dissolved oxygen concentration is below 3.0 mg/L, implement corrective actions such as… and confirm with follow-up testing to verify effectiveness".

C.3. New Development and Redevelopment

C.3.b.i - Regulated Projects– SCVURPPP - #14 - DCB

We appreciate that the Regulated Project thresholds, land use types, and exemptions for C.3 coverage did not change from the current permit. However, new language in Provision C.3.b requires that any Regulated Project that was approved before any C.3 requirements were in effect (i.e., does not have a stormwater control plan) and has not begun construction before MRP 2.0 takes effect must comply with provisions C.3.c and C.3.d (LID treatment and sizing requirements).

- **Issue**: Permittees do not have the legal authority to impose new requirements on projects with approved entitlements or development agreements, and therefore will face non-compliance with this requirement. If a Permittee did try to impose new requirements on such projects, it could face legal battles with the property owner or developers.

  Requested Revision: Delete this requirement.

C.3.c.i.(2)(b) - LID Site Design– SCVURPPP - #15 - DCB

Permittees are required to collectively develop and adopt design specifications for pervious pavement systems, subject to Executive Officer approval. Countywide program guidance manuals already include pervious pavement specifications.

- **Issue:** This requirement duplicates work that already exists[1] and has been and continues to be implemented by Co-permittees. There has been no indication that existing specifications are insufficient or ineffective. In addition, the requirement places an undue new level of work on the Co-permittees, and a potential new level of uncertainty because the specifications are subject to approval by the Executive Officer, without any factual basis in the fact sheet to support the increased effort.

  Requested Revision: Delete the requirement.

C.3.c.i.(2)(c) - LID Stormwater Treatment – SCVURPPP - #16 - DCB

We appreciate that the requirement to demonstrate the infeasibility of rainwater harvesting and use, infiltration, and evapotranspiration before allowing use of biotreatment, based on the experience, analyses, and recommendations of the Permittees, as described in the Fact Sheet.

C.3.e.ii - Special Projects – SCVURPPP - #17 - DCB

The Special Projects criteria for LID treatment reduction credits include criteria for density expressed as

Floor Area Ratio (FAR)[2] or Dwelling Units (DU) per acre. Both criteria are computed based on the size of the project site. The current permit allows jurisdictions to define FAR and calculate DU/acre consistent with their standard practices. MRP 2.0 prescribes specific definitions for each and requires that they be computed based on the total area of the site (e.g., DU/ac based on gross density[3]). The Permittees requested changes to the definitions as part of early input on the Administrative Draft and the changes were not incorporated.

- **Issue:** The definition proposed in the Tentative Order is counter to professional land use planning standards, and should be revised to exclude public rights-of-way. Using gross density as defined in the Tentative Order will result in a lower density value that may prevent some valuable high density projects from qualifying for LID treatment reduction credits. Similarly, Permittees would like to exclude public rights-of-way and public plaza areas from the computation of FAR because these areas can be essential public infrastructure components or contribute toward an overarching community vision and placemaking goals for the area. In practice, areas associated with dedicated public rights-of-way are removed from the parcel acreage. The new definition would create new data requirements that would have to be reported and tracked separately by the Permittees.

  Requested Revision: Change the definitions of FAR and gross density to exclude public plazas, public rights-of-way, and civic areas.

C.3.h - Operation and Maintenance of Stormwater Treatment Systems– SCVURPPP - #18 - DCB

- **Issue:** C.3.h.ii.(7) contains requirements for O&M Enforcement Response Plans (ERPs). Section (c) requires that corrective actions for identified O&M problems with pervious pavement, treatment, and HM systems be implemented within 30 days of identification, and if more than 30 days are required, a rationale must be recorded in the Permittee's inspection tracking database. The process of contacting and educating the property owner, allowing the property owner to arrange for maintenance work to be completed, and following up with a re-inspection typically

[1] The SCVURPPP C.3 Stormwater Handbook (2012) already contains detailed design guidelines and specifications for pervious pavement and grid pavement systems in Chapter 6, Sections 6.10 and 6.11 (see the following link: http://www.scvurppp- w2k.com/c3_handbook_2012.shtml)

[2] Floor area ratio is defined (in the TO) as the ratio of the total floor area on all floors of all buildings at a project site (except structures, floors, or floor areas dedicated to parking) to the total project area.

[3] Gross density is defined (in the TO) as the total number of residential units divided by the acreage of the entire site area, including land occupied by public rights-of-way, recreational, civic, commercial and other non-residential uses.

takes more than 30 days. In Phase I Manager's early input on the Administrative Draft, a correction period of 90 days was requested, consistent with current practice by some Permittees and some existing maintenance agreements. For example, the City of San Jose developed an ERP for its O&M Inspection Program that has been effectively implemented for over a year (prior to the permit requirement). The city's ERP allows 90 days for corrective actions to be implemented, and more than 90 days for corrective actions when a property owner is actively working to resolve an issue.

Requested Revision: Extend the proposed timeline for initial corrective actions from 30 days to 90 days, and retain language allowing for more time when necessary and when the property owner is actively working to resolve outstanding issues.

C.3.h - Operation and Maintenance of Stormwater Treatment Systems– SCVURPPP - #19 - DCB

- **Issue:** Changes were made to allow Permittee to track inspections by the number of sites instead of numbers of treatment/HM facilities, which was an improvement, but inspection of at least 20% of the total number of Regulated Projects is required each year. Permittees have requested more flexibility around that number while still meeting the requirement of inspection of each

site at least once every five years.

Requested Revision: Delete language requiring inspection of 20% of sites per year.

C.3.h - Operation and Maintenance of Stormwater Treatment Systems– SCVURPPP - #20 - DCB

- **Issue:** The change to track inspections by the number of sites instead of number of treatment/HM facilities will also make it challenging for Permittees to plan, conduct and report inspections during FY 15-16, when the tracking process changes midway through the fiscal year (assuming an effective date of December 1, 2015).

  Requested Revision: Establish an effective date of July 1, 2016 for when Permittees change from tracking inspections by number of treatment/HM facilities to tracking by number of Regulated Project sites.

C.3.j - Green Infrastructure Planning and Implementation– SCVURPPP - #21 - DCB

This provision will be one of the most challenging portions of C.3 to implement and has a significant level of uncertainty in terms of what will constitute compliance. It also appears that the level of effort and resources required to implement Provision C.3 could be dramatically higher than implementing MRP 1.0 due to the new Green Infrastructure (GI) requirements.

Provision C.3.j.i requires each Permittee to develop a GI Plan. The GI Plan must include: mechanism to prioritize and map potential GI project areas; maps and lists generated by this mechanism, for implementation within 2, 7, and 12 years of the Permit effective date; targets for amounts of retrofitted impervious surface within 2, 7, 12, 27, and 52 years; tracking and mapping of installed GI systems; streetscape design and construction details and standards; a list of updates and modifications to existing related Permittee planning documents; and reporting on all of the above elements. Permittees must also prepare and submit annually a list of planned and potential GI projects, based on a review of capital improvement projects, and a summary of how each project will include GI to the MEP or why it was impracticable to implement GI.

- **Issue:** The language in Provision C.3.j needs to be more consistent with the expectations in Provisions C.11 and C.12 for achieving PCB and mercury load reductions with GI. Discussions with Water Board staff on C.11 and C.12 have suggested that load reductions can be accomplished by private development and redevelopment, whereas C.3.j only refers to public retrofits.

  Requested Revision: Make more explicit in C.3.j (as well as in C.11/12) that private development and redevelopment as well as public projects will count toward meeting PCB and mercury load reductions.

C.3.j - Green Infrastructure Planning and Implementation– SCVURPPP - #22 - DCB

- **Issue:** Because developing a comprehensive GI Plan will take time and significant resources, the timeframes in the Tentative Order for completion of the GI Plan are unrealistic. For example, the framework for the GI Plan has to be developed and approved by local governing bodies or

city/county managers within one year of the Permit effective date. This is a very short timeframe given the effort required to coordinate and educate internal departments, educate and secure buy-in from executive staff and elected officials, prepare the framework, conduct resource planning, and accommodate lead times for bringing the framework to governing bodies. Additionally, the GI Plan must be completed and submitted with the 2019 Annual Report (3 ½ years from the expected Permit effective date). Completing a GI Plan will be a complex and time-intensive process which will require a great deal of municipal interdepartmental coordination and resources. Prioritization and mapping of potential and planned projects may not be able to be completed within 2 years of the Permit effective date.

Requested Revision: Provide two years to complete and obtain governing body approval of the GI framework. Provide the entire permit term to complete the GI Plan. Eliminate the 2-year deadline to complete prioritization, mapping, and begin implementation of planned/potential projects (before the GI Plan is completed), and include these efforts in the GI Plan development period. Implementation should begin after the GI Plan is completed (unless feasible opportunities for GI projects are identified).

C.3.j - Green Infrastructure Planning and Implementation– SCVURPPP - #23 - DCB

- **Issue:** Prioritization and mapping of potential and planned projects will be a major, resource-intensive effort, especially for those smaller jurisdictions that do not have GIS data layers already available. Additional flexibility in approaches to mapping and prioritization is needed. In addition, the time intervals for planning should be aligned with fiscal years, and made consistent with the time intervals for load reductions in C.11/12.

  Requested Revision: The mechanisms used to develop the GI Plan and priorities should include other less complex tools in addition to the GreenPlan-IT tool. The time intervals should be changed to FY 19-20, FY 24-25, and FY 29-30 (to align with C.11/12 load reduction reporting intervals of 2020 and 2030).

C.3.j.i(1)(c) - Green Infrastructure Planning and Implementation– SCVURPPP - #24 - DCB

- **Issue:** Provision requires Green Infrastructure Plans to include "targets for the amount of impervious surface within the Permittee's jurisdiction to be retrofitted" within 2, 7, 12, 27, and 52 years of the Permit effective date. It is unclear how these "targets" are to be established by each Permittee. In addition, the timeframes for establishing "targets" (we would prefer the term "projections") for the amount of impervious surface retrofitted do not line up with the C.11/12 load reduction timeframes, making it difficult to calculate projected load reductions.

  Requested Revision:: Allow the development of "projections" instead of "targets", and allow Permittees to include projected private development as well as public projects. Allow projections to be developed for the years 2020, 2030, 2040, and 2065, consistent with C.11/12 and with other municipal planning documents.

C.3.j.ii. - Green Infrastructure Planning and Implementation– SCVURPPP - #25 - DCB

- **Issue:** Provision C.3.j.ii requires early implementation of green infrastructure, focused on identifying and implementing public projects that have potential for GI measures (including LID treatment) within the permit term. It is unclear how compliance with this section will be determined. The process for review of planned capital projects needs to be more defined and objective, in order to avoid disagreements with WB staff as to what are "missed opportunities". There also needs to be the recognition that while it may be technically feasible to add LID features to a capital project, the funding for the additional features and the ongoing maintenance of the LID features may not be available. Implementation (i.e., design and construction) during the Permit term of green infrastructure projects that are not already planned and funded will be very challenging for most Permittees.

  Requested Revision: Add the following language (proposed by the Permittees as early input to the Administrative Draft Permit) that would allow for consistent review of capital projects for GI opportunities based on specified criteria:

  > "Permittees shall review and analyze appropriate projects within the Permittee's capital improvement program, and for each project, assess the opportunities and associated

costs of incorporating LID into the project. The analysis shall consider factors such as grading and drainage, pollutant loading associated with adjacent land uses, uses of available space within the project area, condition of existing infrastructure, opportunities to achieve multiple benefits such as providing aesthetic and recreational resources, and potential availability of incremental funding to support LID elements along with other relevant factors. Permittees will collectively evaluate and develop guidance on the criteria for determining practicability of incorporating green infrastructure measures into planned projects."

Allow the development of these criteria to take place within the first seven months of the Permit effective date, and set the implementation date to begin review of capital projects as July 1, 2016 (beginning of the fiscal year), with the submittal of the first list of projects with the 2017 Annual Report.

C.4. Industrial and Commercial Site Controls

C.4.c– Enforcement Response Plans (ERPs) – SCVURPPP - #26 - DCB

- **Issue:** Provision C.4.c.ii.(3) of the TO, Timely Correction of Potential and Actual Non-stormwater Discharges, now states that "Permittees shall require" correction for all potential and actual discharges before the next rain event but no longer than 10 business days. The current permit requires that all violations be corrected in a timely manner with the "goal" of correcting them before the next rain event but no longer than 10 business days, and if greater than 10 business days is required, the inspector must record the rationale in a database or tabular system. Adding the language "Permittees shall require" does not allow for flexibility needed by an inspector issuing an enforcement action. If adopted as written, this provision would require sites with minor issues during the dry season (i.e., verbal warnings) to have a follow-up inspection within 10 business days to confirm corrective actions have been implemented. This will greatly increase the work load for inspectors with no water quality benefit and without any factual basis in the fact sheet to support the increased level of service.

  Requested Revision: We request that the requirement as worded in the current permit be maintained in the Tentative Order. In addition, in Provision C.4.c.ii - Implementation Level, there is a requirement for a description of the Permittee's procedures for confirmation of implementation of corrective actions. Given the burdensome requirement for all potential discharges to be corrected within 10 business days during dry weather, we request the Fact Sheet include text to clarify the flexibility that confirmation of corrective actions is not limited to a follow-up inspection but may occur during the initial inspection, or be a photo submittal or documentation from the facility.

C.5. Illicit Discharge Detection and Elimination

C.5.a – Legal Authority– SCVURPPP - #27 - DCB

- **Issue:** New text was added to Provision C.5.a Legal Authority that requires Permittees to have adequate legal authority to address illicit discharges including sewage. The new text provides an exception for those sewage-related discharges that "already reported to the Water Board through the California Integrated Water Quality System Project." While we appreciate the attempt to exempt those illicit discharges reported to the Water Board consistent with requirements outside of the MRP, this exemption is misplaced and should be associated with the tracking and reporting of these discharges via the MRP, not having the legal authority to address these discharges.

  Requested Revision: We request that the text "already reported to the Water Board through the California Integrated Water Quality System Project" be moved from Provision C.5.a Legal

Authority to the more appropriate provision - C.5.d. Tracking and Case Follow-up. Permittees should maintain the legal authority to address all sewage illicit discharges, but would like to exclude the requirement for tracking sanitary sewer overflows via their water quality spill and dumping complaint tracking and follow-up electronic database/tabular system required by the MRP if the data are already being reported through CIWQS. To address this issue, we recommend the following underlined text be added to the following provision:

> **C.5.d.i Task Description** – All incidents or discharges reported to the spill and dumping central contact point that might pose a threat to water quality shall be logged to track follow-up and response through problem resolution. The data collected shall be sufficient to demonstrate escalating responses for repeated problems and inter/intra-agency coordination, where appropriate. If data are tracked and reported to the Water Board under another permit (e.g., SSOs reported according to State Board Order No. 2006-0003-DWQ) it is not necessary to track and report the incident according to this provision.

C.5.b– Enforcement Response Plans (ERPs) – SCVURPPP - #28 - DCB

- **Issue:** Provision C.5.b.ii.(3) of the TO, Timely Correction of Potential and Actual Non-stormwater Discharges, now states that "Permittees shall require" correction for all potential and actual discharges before the next rain event but no longer than 10 business days. The current permit requires that all violations are corrected in a timely manner with the "goal" of correcting them before the next rain event but no longer than 10 business days, and if greater than 10 business days is required, the inspector must record rationale in database or tabular system. Adding the language "Permittees shall require" does not allow for flexibility needed by inspector issuing an enforcement action. If adopted as written, this provision would require sites with minor issues during the dry season (i.e., verbal warnings) to have a follow-up inspection within 10 business days to confirm corrective actions have been implemented. This will greatly increase the work load for inspectors with no water quality benefit and without any factual basis in the fact sheet to support the increased level of service.

  Requested Revision: We request that the requirement as worded in the current permit be maintained in the Tentative Order. In addition, in Provision C.5.b.ii - Implementation Level there is a requirement for a description of the Permittee's procedures for confirmation of implementation of corrective actions. Given the burdensome requirement for all potential discharges to be corrected within 10 business days during dry weather, we request the Fact Sheet include text to clarify the flexibility that confirmation of corrective actions is not limited to a follow-up inspection but may occur during the initial inspection, or be a photo submittal or documentation from the facility.

C.5.e – Control of Mobile Sources– SCVURPPP - #29 - DCB

- **Issue:** The Control of Mobile Sources provision has new, onerous reporting requirements that are duplicative of reporting required in other provisions, including reporting on local, county-wide and regional outreach efforts (reported in Provision C.7) throughout the permit term, number of inspections conducted (reported in Provision C.4 or C.5), and number and type of enforcement actions taken (reported in Provision C.4 or C.5). Specifically, Provision C.5.e.iii.(1).(f) specifically requests a list of mobile cleaners operating within the Permittee's jurisdiction.

  Requested Revision: We request that the mobile business lists referred to in C.5.e.ii.(1)(c) and C.5.e.iii.(2)(f) refer specifically to "mobile cleaners" for consistency. We also request that the reporting requirements C.5.e.iii.(1)(f) and C.5.e.iii.(2)(f) refer to "inventories" to be consistent with the implementation level requirements. Additionally, delete the reporting requirements in Provision C.5.e.iii related to inspections, enforcement and outreach that are reported in other Annual Report sections. We would also like to recommend the following underlined revisions to provide consistency with the development and reporting of a business inventory:

  - C.5.e.ii.(1)(c) Regularly updating mobile cleaner business inventories

- C.5.e.iii.(1)(f) ~~a list of mobile cleaners operating within the Permittee's jurisdiction~~; Permittee's inventory of mobile cleaner businesses
- C.5.e.iii.(2)(f) ~~a list of mobile businesses operating within the Permittee's jurisdiction~~; Permittee's inventory of mobile cleaner businesses

C.6. Construction Site Control

C.6.b– Enforcement Response Plans (ERPs) – SCVURPPP - #30 - DCB

- **Issue:** Provision C.6.b.ii.(3) in the TO, Timely Correction of Potential and Actual Non-stormwater Discharges, now states that "Permittees shall require" correction for all potential and actual discharges before the next rain event but no longer than 10 business days. The current permit requires that all violations be corrected in a timely manner with the "goal" of correcting them before the next rain event but no longer than 10 business days, and if greater than 10 business days is required, the inspector must record the rationale in a database or tabular system. Adding the language "Permittees shall require" does not allow for flexibility needed by an inspector issuing an enforcement action. If adopted as written, this provision would require sites with minor issues during the dry season (i.e., verbal warnings) to have a follow-up inspection within 10 business days to confirm corrective actions have been implemented. This will greatly increase the work load for inspectors with no water quality benefit and without any factual basis in the fact sheet to support the increased level of service.
- **Requested Revision**: We request that the requirement as worded in the current permit be maintained in the Tentative Order. In addition, in Provision C.6.b.ii - Implementation Level there is a requirement for a description of the Permittee's procedures for confirmation of implementation of corrective actions. Given the burdensome requirement for all potential discharges to be corrected within 10 business days during dry weather, we request the Fact Sheet include text to clarify the flexibility that confirmation of corrective actions is not limited to a follow-up inspection but may occur during the initial inspection, or be a photo submittal or documentation from the facility.

C.6.d – Plan Approval Process – SCVURPPP - #31 - DCB

- **Issue:** Provision C.6.d - Plan Approval Process requires verification that the developer/operator has "obtained coverage" under the Construction General Permit for sites disturbing one acre or more of land. Determination of whether a developer/operator has "obtained coverage" under the General Permit is the responsibility of the Water Board, not Permittees. The current permit language requires verification the developer has "filed a Notice of Intent."

  Requested Revision: We request that the requirement in the current permit for Permittees to verify that the developer/operator has "filed a Notice of Intent" be maintained in Tentative Order.

C.6.e.iii.(2)(g) - Reporting – SCVURPPP - #32 - DCB

- **Issue**: The text refers to the "number of violations" fully corrected as the number of enforcement actions, which is inconsistent with similar reporting requirements in Provision C.4.

  Requested Revision: In MRP 1.0 Annual Reporting formats accounted for differences in violations and enforcement actions data tracking between agencies. We request that Water Board staff work with Permittees to maintain this reporting flexibility and develop reporting requirements for C.6.e.iii.(2)(g) and C.4.d.iii.(3) that reflect existing effective tracking and reporting systems.

C.6.e.ii(2)(b) – Inspection of Hillside Projects – SCVURPPP - #33 - DCB

- **Issue**: Provision C.6.e.ii(2)(b) requires that monthly wet season inspections be conducted at hillside projects (defined by Permittee maps or > 15% slope) that disturb 5,000 sq ft or more of soil. This threshold is arbitrary and has no linkage to whether the project is a significant threat to water quality, which is the current criterion for inspection sites that disturb less than 1 acre of soil. In addition, this requirement to change inspection frequency criteria has no implementation date, so it is assumed to take effect on the effective date of the permit (i.e., December 1, 2015) in the middle of the wet season, which will be problematic for Permittees to implement.

  Requested Revision: Phase I stormwater program managers provided early input to the Administrative Draft that included recommended language that would limit inspections of hillside projects "meeting a minimum size threshold for disturbed land as defined by the Permittee." We request that Water Board staff incorporate this recommended language into the Revised Tentative Order. Also, we request a July 1, 2016 implementation date for monthly inspections in this new category . The number of sites and inspections for this new category for the entire wet season and the criteria used to determine the new category could be reported in the 2017 Annual Report. Additionally, we request that the following underlined revisions are made to the provision:

  - C.6.e.ii.(2) {add at the end} Effective Date – Immediate, except July 1, 2016 for category (2)(b) hillside projects.
  - C.6.e.iii.(1) In the 2017 Annual Report, each Permittee shall certify the criteria it uses to determine hillside developments. If the Permittee is using maps of hillside developments areas or other written criteria, include a copy in the Annual Report.
  - C.6.e.iii.(2)(a) Total number of active hillside sites disturbing less than one acre of soil requiring inspection, beginning in the 2017 Annual Report.

C.8. Water Quality Monitoring

C.8.d.i (Biological Assessment) and C.8.d.i (Chlorine)– SCVURPPP - #34 - DCB

- **Issue:** There are two sections C.8.d.**i**.

  Requested Revision: Renumber C.8.d subsections.

C.8.d.i.(1) - Biological Assessment – Field and Laboratory Method– SCVURPPP - #35 - DCB

- **Issue:** Permittees are required to conduct biological assessments using the full characterization of physical habitat (full PHab). Use of full PHab was not required under MRP 1.0, instead, a limited PHab methodology was required. This is because the information collected under the full PHab method is not useful in random probabilistic-style monitoring designs such as the one implemented by SCVURPPP and coordinated through the Regional Monitoring Coalition (RMC). Full PHab is more useful in targeted monitoring programs where specific sites are selected. Implementation of the full PHab methodology adds approximately 20 minutes onto the field time for each bioassessment station, eliminating most opportunities to sample two sites per day, resulting in increased costs to the sampling program.

  Requested Revision: Restore the modified physical habitat assessment requirement that was required under the current permit. The use of full PHab will greatly increase the work load for bioassessment with no water quality benefit and without any factual basis in the fact sheet to support the increased costs of sampling.

C.8.d.ii - Temperature and C.8.d.iii - Continuous Monitoring of Dissolved Oxygen, Temperature, and pH (Creek Status))– SCVURPPP - #36 - DCB

Permittees are required to continuously monitor streams for temperature from April through September (C.8.d.ii) and for 1 to 2 weeks in the spring and summer (C.8.d.iii). Permittees shall consider conducting a

SSID project when results exceed the given temperature trigger.

- **Issue:** The Maximum Weekly Average Temperature (MWAT) trigger listed in this provision was developed for salmonid streams in the Pacific Northwest where the climate is cooler than the Bay Area. Salmonid species in the Bay Area have adapted to warm temperatures and as appropriate, regulatory/resource agencies (e.g., NMFS) have set temperature targets for certain cold water streams based on the life history needs of specific species. Trigger thresholds included in the Tentative Order are based on false assumptions, inconsistent with existing targets established by the regulatory agencies, and will likely create confusion when applying to water data collected via the MRP.

  Requested Revision: Allow Permittees to determine watershed-specific temperature trigger thresholds consistent with targets established via other regulatory processes (e.g., agreements with NMFS), if applicable, and set reasonable "default" temperature thresholds for those streams where targets have not been established.

C.8.d.iv - Toxicity in Water Column– SCVURPPP - #37 - DCB

Permittees are required to collect grab samples of water and conduct toxicity testing using five test organisms and specified methods, and evaluate toxicity using the Test of Significant Toxicity (TST) statistical approach.

- **Issue:** The required water column aquatic toxicity analytical procedure for *Hyalella azteca* (freshwater amphipod) and *Chironomus dilutus* (midge) (i.e., EPA 821-R-02-013) does not include those organisms (except in an appendix) and does not specify the test protocol design, such as the number of replicates, number of organisms, etc.

  Requested Revision: Replace EOA-821-R-02-012 with EPA-600-R-99-064 for *Hyalella azteca* (freshwater amphipod) and *Chironomus dilutus* (midge) which does provide specific protocols. A reference toxicant test method is prescribed for these organisms in water in the EPA-600-R-99-064 manual.

- **Issue:** The TST statistical approach has not been adopted by the SWRCB and therefore should not be included in the MRP.

  Requested Revision: Require that the TST approach be implemented following SWRCB adoption of the proposed Policy for Toxicity Assessment and Control. Until that time, the MRP 1.0 approach should be used.

C.8.d.v - Toxicity and Pollutants in Sediment– SCVURPPP - #38 - DCB

Permittees are required to collect grab samples of bedded sediment and conduct toxicity testing using two test organisms and specified methods, and evaluate toxicity using the Test of Significant Toxicity (TST) statistical approach. Sediment grab samples must also be analyzed for several pollutants. For pollutants without water quality objectives (WQOs), Permittees are required to consider conducting an SSID project when results exceed Probably Effects Concentrations (PECs) or Threshold Effects Concentrations (TECs) from MacDonald 2000.

- **Issue:** The TST statistical approach has not been adopted by the SWRCB yet.

  Requested Revision: Require that the TST approach be implemented following SWRCB adoption of the proposed Policy for Toxicity Assessment and Control. Until that time, the MRP 1.0 approach should be used.

C.8.d.v - Toxicity and Pollutants in Sediment– SCVURPPP - #39 - DCB

- **Issue:** The pollutant list includes high cost, low benefit analytes such as PCBs, mercury, and organochlorine (OC) pesticides, some of which (PCBs and mercury) are being monitored extensively under Provision C.8.f. Data collected under this provision is for the purposes of assessing the quality of local creeks and channels, not the Bay, which is the water body listed on the 303(d) list of water quality impaired segments for these legacy pollutants. Therefore, there is

no justification for analyzing bedded creek/channel sediment for these pollutants.

Requested Revision: Remove PCBs, mercury and OC pesticides from the analyte list in Table 8.2.

Attachment A, continued

C.8.d.v - Toxicity and Pollutants in Sediment– SCVURPPP - #40 - DCB

- **Issue:** Threshold Effects Concentrations (TECs) for bedded sediments are very conservative values that do not consider site specific background conditions, and are therefore not depictive of water quality concerns in receiving waters in the Bay Area. Including TEC values as triggers for SSID consideration will result in nearly every sample being considered for an SSID project. For example, the predominant TEC values triggered during MRP 1.0 were Chromium and Nickel. Both are found abundantly in upper non-urban watersheds in Santa Clara County due to the presence of naturally occurring serpentinite bedrock.

  Requested Revision: Remove TECs from the list of conditions triggering consideration of conducting a SSID project.

C.8.e.iii.(1).(f) - SSID Projects – Step 1: Toxicity Study Work Plan– SCVURPPP - #41 - DCB

Permittees are required to conduct SSID projects in a defined stepwise process. Step 1 requires development of a work plan for each SSID project and defines what elements the work plan should include. For toxicity studies where there is no chemical pollutant associated with the toxicity result, this Provision requires that a Toxicity Identification Evaluation (TIE) is conducted.

- **Issue:** Requiring Permittees to conduct TIEs overly constrains the study design and is a departure from MRP 1.0 which also allowed for first conducting the more flexible Toxicity Reduction Evaluations (TREs). A TRE is a site-specific study that relies on "weight of evidence" reasoning to identify the cause of toxicity and may include a TIE if warranted. A TIE identifies the toxic components of the sample through chemical manipulation.

  Requested Revision: Restore the option from MRP 1.0 which allows Permittees to first conduct a TRE for toxicity SSID studies and then conduct a TIE if the TRE does not result in identification of the cause of toxicity.

C.8.e.iii.(3).(b) - SSID Projects – Step 3: Follow up actions – SCVURPPP - #42 - DCB

Permittees are required to conduct SSID projects in a defined stepwise process. Step 3 defines the possible follow up actions. If a Permittee determines that that their MS4 is not a source contributing to the exceedance, this Provision requires concurrence in writing by the Executive Officer before the SSID project can be determined to be completed.

- **Issue:** Executive Officer concurrence of SSID project completion may be lengthy and/or result in unnecessary additional investigation with unknown cost and schedule implications.

  Requested Revision: Remove the requirement for Executive Officer approval.

C.8.f.ii - Table 8.4 POC Monitoring Parameters, Effort and Type– SCVURPPP - #43 - DCB

Permittees are required to conduct POC monitoring consistent with the monitoring intensity and frequency specified in Table 8.4. Table 8.4 lists the total number of samples required over the permit term and on an annual basis for each pollutant of concern.

- **Issue:** Footnote "a" for Table 8.4 states that the Total Samples Collected column applies to the permit term; however, this conflicts with the paragraph preceding Table 8.4 which states that the total shall be collected by the end of the fourth Water Year. It is unclear by what date the total number of samples should be collected.

  Requested Revision: Revise the text paragraph preceding Table 8.4 to be consistent with footnote "a".

C.8.f.ii - Table 8.4 POC Monitoring Parameters, Effort and Type– SCVURPPP - #44 - DCB

- **Issue:** Column B in the Toxicity row of Table 8.4 states that the Total Samples to be Collected is 10; however, Column C states that a minimum of 20 samples is required. It appears that the Column C total is a typo and it is unclear whether 10 or 20 toxicity samples should be collected.

  Requested Revision: Fix the typo in Column C of the toxicity row on Table 8.4 from 20 to 10.

C.8.f.ii - Table 8.4 POC Monitoring Parameters, Effort and Type– SCVURPPP - #45 - DCB

- **Issue:** Toxicity sampling of the sediment is required during the wet season but not necessarily during storms. Typically sediment samples are collected during the dry season both to

  characterize sediment transport that has occurred throughout the year and to coordinate sampling with other dry season parameters. There is no scientific justification for sediment sample collection during the wet season.

  Requested Revision: Delete the required timing of the sediment sample, change it to the dry season, or provide a technical justification for wet season sediment sampling.

C.8.f.ii - Table 8.4 POC Monitoring Parameters, Effort and Type– SCVURPPP - #46 - DCB

- **Issue:** The required Total Samples Collected/yearly minimum for copper, pesticides, and nutrients (20/2) is double the required minimums required numbers for toxicity (10/1). The cost of sending out field crews to collect that additional copper, pesticide, and nutrient samples is high and the benefit of the data is low. There are already programs in place to address copper and pesticide management actions. Furthermore, many nutrient samples will already be collected concurrent with Biological Assessments required by Provision C.8.d (Creek Status). Requiring additional samples eliminates opportunities to realize cost savings by coordinating copper, pesticide, and nutrient sampling with toxicity sampling.

  Requested Revision: Reduce the sampling effort (Total Samples Collected/yearly minimum) for copper, pesticides, and nutrients to 10/1 to be consistent with the required toxicity sampling effort.

C.8.f.ii - Table 8.4 POC Monitoring Parameters, Effort and Type– SCVURPPP - #47 - DCB

- **Issue:** Table 8.4 requires a yearly minimum number of samples for all pollutants. This requirement constrains study design options by eliminating the possibility of conducting intensive one-year studies. This is especially true for pollutants with an already large knowledge base such as copper, pesticides, toxicity, and nutrients.

  Requested Revision: Eliminate annual requirements for copper, pesticides, toxicity, and nutrients to allow for the option of meeting the minimum total samples collected during intensive watershed studies conducted over one or two years.

C.8.f.ii - Table 8.4 POC Monitoring Parameters, Effort and Type– SCVURPPP - #48 - DCB

- **Issue:** Table 8.4 does not address potential changes to POC Monitoring in the event that a statewide coordinated pesticides and pesticides-related toxicity monitoring program begins collecting data during the permit term.

  Requested Revision: Add a footnote to the Pesticides row of Table 8.4 stating that "In the case

that a statewide coordinated pesticides and pesticides-related toxicity monitoring program begins collecting data on an ongoing basis during the permit term, Permittees may request the Executive Officer reduce or eliminate this monitoring requirement."

C.8.f.iii - Table 8.5 POC Monitoring Analytical Methods – SCVURPPP - #49 - DCB

Permittees are required to analyze the POC samples according to methods listed in Table 8.5. If no methods are listed, Permittees shall use USEPA or SWAMP-approved methods. Table 8.5 specifies analytical methods for PCBs and toxicity.

- **Issue:** The method specified for PCBs in Table 8.5 is USEPA 1668 (RMP 40). Method 1668 is a very high resolution PCB congener method which costs on the order of $800 - $1000 per sample. A total of 80 PCB samples are required by year 4 or 5 of the permit (unclear) which equals a cost burden of $64,000 to $80,000 for each Countywide Program. Other PCB congener analytical methods (e.g., Method 8082a) are available at a much lower cost and meet the goals of the monitoring. These lower cost methods have been successfully used during the MRP 1.0 permit term to Identify Source Areas on a larger scale than what could be achieved with the higher cost Method 1668.

  Requested Revision: Remove reference to an analytical method for PCBs.

C.8.g.iv - Reporting – Pollutants of Concern Monitoring Reports – SCVURPPP - #50 - DCB

By October 15 of each year Permittees are required to submit a report describing the allocation of sampling effort for POC monitoring for the forthcoming year and what was accomplished for POC monitoring during the preceding water year.

Attachment A, continued

- **Issue:** A water year ends on September 30; therefore, there are only 15-days available to compile, tabulate, and analyze the data prior to the report deadline of October 15. It would be impossible to provide useful evaluations during such a short time period. Furthermore, the October 15 deadline differs from the March 15 deadline required under MRP 1.0 for POC Monitoring and required under MRP 2.0 for the Urban Creeks Monitoring Report.

  Requested Revision: Revise the timeline for POC monitoring reporting so that it is the same timeline for reporting the POC data and the rest of the C.8 data consistent with C.8.g.iii.

C.9. Pesticides Toxicity Control

C.9.c - Require Contractors to Implement IPM – SCVURPPP - #51 - DCB

- **Issue:** Provision C.9.c.i requires Permittees to hire IPM-certified contractors AND include contract specifications requiring contractors to implement IPM. This requirement as written is duplicative because contract specifications are equivalent to hiring IPM-certified contractors. The current permit requires Permittees to hire IPM-certified contractors OR include contract specifications requiring contractors to implement IPM. This flexibility is important to adequately addressing this provision because there are a very limited number of contractors that are "IPM-certified", but many contractors that will conduct IPM per municipal contracts.

  Requested Revision: Water Board staff has indicated that this is a typo and that they intended to change the "and" to "or" in the revised TO. We request that the provision be revised to retain the current requirements by changing "and" to "or".

C.9.d – Interface with County Agricultural Commissioners– SCVURPPP - #52 - DCB

- **Issue:** Provision C.9.d.i.(c) requires Permittees to report to the Agricultural Commissioner violations of pesticide regulations (e.g., illegal handling and applications of pesticides) associated with stormwater management, particularly the California Department of Pesticide Regulation surface water protection regulations for outdoor, nonagricultural use of pyrethroid pesticides by

any person performing pest control for hire (http://www.cdpr.ca.gov/docs/legbills/rulepkgs/11-004/text_final.pdf). Permittees do not inspect pesticide applications by pest control operators and believe this is outside of their jurisdiction and authority.

Requested Revision: Replace the language in C.9.d.i(c) with the language in Provision C.9.f.i.(3) of the current permit: "report violations of pesticide regulations (e.g., illegal handling) associated with stormwater management."

C.9.e – Public Outreach – SCVURPPP - #53 - DCB

- **Issue**: Provision C.9.e.ii.(2) focuses on outreach to residents who use structural pest control operators and contractors on links between pesticide usage and water quality and IPM, but does not include residents who use landscape professionals. Permittees requested the addition of "landscape professionals" to this provision via early input to the Administrative Draft, but the changes were not made.

  Requested Revision: Revise the language to include the following underlined language: "The Permittees shall conduct outreach to residents who use or contract for structural pest control or landscape professionals by (a) explaining the links between pesticide usage and water quality; (b) providing information about IPM in structural pest management certification programs or landscape professional trainings; and (c) disseminating tips for hiring structural pest control operators or landscape professionals, such as the tips prepared by the University of California Extension IPM Program (UC-IPM).

ttachment A, continued

C.10 Trash Load Reduction

C.10.a.i – Trash Reduction Requirement Schedule – SCVURPPP - #54 - DCB

- **Issue:** Reductions become increasingly more challenging the closer Permittees move towards the trash reduction goal of "no adverse impacts". Provision C.10.a.i (Schedule) requires a 70% load reduction by 2017. This schedule is too rigorous and should be extended to allow for more time to develop/implement sustainable control measures. Most of the areas remaining to be addressed are moderate trash generating areas and will likely require more innovative controls that will have to be piloted.

  Requested Revision: We request that the 70% load reduction time schedule, set for 2017 in the Tentative Order, be extended at least to 2018.

C.10.a.ii.b – Trash Generation Area Management (Private Drainage Areas) – SCVURPPP - #55 - DCB

- **Issue:** Provision C.10.a.ii.b (Trash Generation Area Management) requires Permittees to map and assess ALL private drainages 5,000 ft^2 and greater, determine the level of trash present in these areas, and ensure that no further actions are needed. The intent of mapping these drainages is unclear. Mapping would require a significant undertaking that would result in minimal water quality benefit. Ensuring that private drainages are at a "low" trash generation level does not require mapping. Areas can be identified by modifying existing municipal inspection programs already in place.

  Requested Revision: We request that the mapping requirement be removed from this provision. As an alternative, Permittees should be required to: 1) identify high priority areas that generate moderate, high or very high levels of trash and are plumbed directly to their storm drain systems, and 2) implement best management practices to minimize trash discharges from these areas via coordination with other provision (e.g., provision C.4) as applicable.

C.10.a.ii.b – Trash Generation Area Management (Private Drainage Areas) – SCVURPPP - #56 - DCB

- **Issue:** Throughout the Bay Area thousands Green Infrastructure (C.3 compliant) facilities have been constructed on properties over the last 10+ years. These facilities were designed consistent with the new and redevelopment requirements and perform at a level similar to typical trash full capture systems. These systems have been designed to prevent flooding and effectively remove pollutants from stormwater. Provision C.10.a.iii (Mandatory Minimum Full Trash Capture Systems) currently requires Permittees to install a screen (5mm) to the overflow pipes of all Green Infrastructure facilities before these devices can be considered full capture systems. Screening the overflow pipes would be out of the scope of the municipality's authority, as nearly all treatment facilities are privately owned and maintained. Additionally, adding screens to existing facilities would have unknown effects to the performance of these systems and would likely increase the maintenance and flooding if retrofitted with screens. The Water Board should reconcile this issue. The requirements for the sizing and design of green infrastructure facilities are now well established. Requiring modifications to these designs for trash just doesn't make sense. The Water Board established provisions requiring these facilities based on their ability to remove pollutants attached to small particles less 0.1mm in size, but is now requiring modifications for trash items that are at least 20 times greater in size. Trash items ARE effectively removed by these facilities without modification.

  Requested Revision: We request that the Water Board removed the requirement for "screening" all Green Infrastructure treatment facilities installed and maintained consistent with provision C.3 and in the Permit deem that these facilities are equivalent to full capture systems.

C.10.b.i.a – Maintenance (of Full Trash Capture Systems) – SCVURPPP - #57 - DCB

- **Issue:** Provision C.10.b.i.a (Maintenance of Full Capture Systems) currently requires maintenance of small capture devices based on the level of trash generated in the surrounding area. Maintenance frequencies based on trash generation are inconsistent with the experience

and knowledge of Permittees. Maintenance frequencies are site specific and are mostly affected by the amount of vegetative material (typically comprising over 85% of the debris captured by a device) that reaches the device and the size of the inlet vault, not the amount of trash generated in the surrounding area.

Requested Revision: As an alternative to arbitrary maintenance frequencies, we request that the TO be revised to require Permittees to develop and implement Permittee-specific maintenance programs to achieve/maintain full capture criteria. Permittees would then report on the implementation of their maintenance programs, adaptation of these programs and any issues that need to be addressed. Tailoring maintenance programs to maintenance needs of specific devices is the only way to ensure adequate maintenance of these devices into the future.

C.10.b.iv - Source Controls – SCVURPPP - #58 - DCB

The most important actions that can be taken by Permittees are those that eliminate the generation of litter prone items in perpetuity. Bay Area Permittees have been national leaders on taking actions to eliminate the sale or distribution of litter prone items. Nearly every Permittee in the Bay Area has adopted an ordinance focused at eliminating certain types of trash in our creeks and the Bay. These actions took significant political support, public resources and were done in partnership with environmental NGOs.

- **Issue:** Permittees to-date have focused on a instituting a number of different types of source control actions. Data collected by Permittees indicated that each individual action reduces between 5 and 10% of the trash found in stormwater on average. These reductions are likely not observed by visual assessment protocols because they are only precise enough to detect reductions greater than 25%. Therefore, without a specific reduction value for source controls, reductions associated with these actions may never be valued.

The maximum of 5% reduction for all source control actions is arbitrary and inconsistent with our current knowledge of the percentage of trash in stormwater comprised of specific litter-prone items associated with source control actions. The programs put into place to address these litter prone items are effective and directly impact stormwater quality.

Requested Revision: We request that the TO be revised to increase the maximum reduction value for all source control actions combined to 25%. Supporting evidence would be required to claim reductions associated with source controls.

C.10.b.v - Receiving Water Observations– SCVURPPP - #59 - DCB

- **Issue:** The TO requires the Permittees to conduct receiving water observations downstream from trash generation areas converted to "low" trash generation and that "the observations be sufficient to determine whether a Permittee's trash control actions have effectively prevented trash from discharging to receiving waters…" By requiring Permittees to focus on areas downstream of control actions, it appears that receiving water observations could be used to judge compliance with reductions associated with municipal stormwater. This is contradictory and confusing, because the process to judge compliance with stormwater reductions is outlined in the TO as full capture, visual assessments, source control values, and offsets associated with cleanups.

  SCVURPPP Permittees recognize and have interest in developing an ambient monitoring program that would continue to evaluate trash conditions or levels in local creeks and rivers using a cost-effective and practical protocol. This protocol, however, has not yet been developed.

  Requested Revision: We request that the TO language be revised to state that purpose of receiving water observations is "…to evaluate the level of trash present in receiving waters over time, and to the extent possible determine whether there are ongoing sources contributing trash at problematic levels. These would include sources outside of the Permittee's jurisdiction (e.g., state and federal facilities) that are causing or contributing to adverse trash impacts in the receiving water(s)." Receiving water data may also assist Permittees in adaptively managing their trash control programs over time for higher levels of efficiency. To this point, we are willing

to be a partner with the Water Board and NGOs in developing and pilot-testing a protocol during the permit term to achieve this purpose.

C.10.e.i – Optional Trash Load Reduction Offset Opportunities - Creek and Shoreline Cleanups– SCVURPPP - #60- DCB

Creek and shoreline cleanups are important actions that promote community involvement, create awareness of trash issues, and improve water quality. These actions have water quality value, are supported by the community and environmental NGOs, and should be accounted for accordingly in the load reduction accounting method.

- **Issue:** While SCVURPPP permittees appreciate the inclusion of load reduction benefits associated with creek and shoreline cleanups, the 5% maximum offset for these important actions is too small and inconsistent with the environmental benefit. Additionally, the arbitrary 10:1 ratio of trash removed to offset value is too large and under values the benefits of these actions.

  The requirement for a minimum cleanup frequency of 2x/year at each specific site creates inflexibility and is too constraining. Some Permittees may choose to cleanup many sites 1x/year rather than a small number of sites 2x/year. What's important is that trash is being removed from creeks and shorelines, not how many times at a specific site.

  Requested Revision: We request that the TO be revised to:

  - Increase the maximum offset for creek and shoreline cleanups to 10%;
  - Reduce the ratio of trash removed to reduction value to 3:1, similar to other types of mitigation programs; and,

- Remove the requirement that a site be cleaned up at least 2x/year before claiming an offset.

C.10.e.i – Optional Trash Load Reduction Offset Opportunities – Direct Discharge Trash Controls– SCVURPPP - #61 - DCB

This offset is intended to address trash impacts associated with non-stormwater pathways to creeks and rivers such as illegal dumping directly into water bodies. These pathways directly impact water bodies and at some sites serve as the dominant source of trash. Programs that address trash from direct discharges should be accounted for accordingly in the load reduction accounting method.

- **Issue:** While SCVURPPP permittees appreciate the inclusion of load reduction benefits associated with direct dumping, the 10% maximum offset for these important programs is too low and inconsistent with the environmental benefit of these programs. Additionally, the arbitrary 10:1 ratio of trash removed to offset value is too large and undervalues the benefits of these actions. Lastly, Permittees may identify direct discharges as an important source of trash to receiving waters after 2016, and therefore the 2016 Annual Report should not be the only time when Permittees can submit a plan to address these sources.

  Requested Revision: We request that the TO be revised to:

  - Increase the maximum offset for programs addressing direct discharges to 25%;
  - Reduce the ratio of trash removed to reduction value to 3:1, similar to other types of mitigation programs; and
  - Allow for submittals of plans to control direct discharges identified after 2016.

C.10.f - Reporting– SCVURPPP - #62 - DCB

- **Issue:** Compliance with NPDES permits is determined by the Water Board. Provision C10.f.v.b requires the Permittees to "submit a report of non-compliance" if it cannot demonstrate the attainment of 70% reduction, which therefore assumes that compliance determinations are made by the Permittee.

  Requested Revision: We request that the Water Board revise this provision to require that a Permittee that cannot demonstrate a 70% reduction, "submit a report and updated Long-term Trash Load Reduction Plan that describes actions to comply with the mandatory deadlines in a timely manner…"

C.11. Mercury Controls– SCVURPPP - #63 - DCB

Provisions C.11.a – c in the Tentative Order generally parallel C.12.a – c. Therefore, the below comments on those provisions for C.12 (PCBs Controls) also generally apply to C.11 (Mercury Controls).

C.12. PCB Controls

PCBs are a highly persistent (i.e., slow to degrade) legacy pollutant that have been in San Francisco Bay for decades and likely will remain in the Bay for decades to come. Over the past 15 years, Bay Area municipalities in collaboration with the Regional Monitoring Program (RMP) have conducted extensive field studies and gained considerable knowledge about the distribution of PCBs in the Bay Area environment. Due to widespread uses and lack of regulation over many decades (i.e., 1930s – 1970s), this pollutant was widely dispersed in soils and sediments throughout the urban landscape draining to the Bay. Similarly, PCBs are widely dispersed within the Bay's sediments.

Over the past 15 years, Bay Area municipalities have also made a great deal of progress towards

understanding the types of control measures that are most cost-effective in reducing PCBs discharges in stormwater.

Although this evaluation of controls is ongoing, no controls identified to-date are particularly cost-effective, apart from the 1979 ban by USEPA on PCBs manufacture, import, export, and distribution in commerce in the United States. The ban represented effective "true source control" but came much too late to prevent the widespread distribution of PCBs into the urban landscape and the Bay. With further true source control generally not an option, the current challenges in addressing PCBs are not surprising.

Extensive source property identification programs led by Bay Area municipalities have identified a small number of PCBs "hot spots" in watersheds across the Bay Area. These hot spots are mostly associated with properties that are currently under cleanup orders from the Regional Water Board, EPA, or DTSC, or are currently permitted by these agencies or could be in the future. These sites are generally outside of the control of local agencies.

It may also be possible to reduce PCBs discharges in stormwater over the next few decades by requiring (as the permit does now through provision C.3) stormwater treatment on private properties as they are redeveloped. Retrofitting in public rights-of-way with landscape-based treatment structures (e.g., "Green Streets") is another approach that provides multiple benefits, but is highly resource and time intensive. Planning for a long-term (i.e., decadal) program to retrofit urban areas with green infrastructure has been incorporated into the Tentative Order, but implementation will mostly occur during future permit terms and require several decades.

Additionally, there may be opportunities, although highly uncertain, to prevent future contamination as buildings containing PCBs that were constructed during the 1950s - 1970s are demolished. However, the rate at which buildings are demolished and redevelopment occurs, and therefore the timeframe for reduction of PCBs associated with these sources and areas, is generally out of the control of local agencies.

C.12. PCB Controls– SCVURPPP - #64 - DCB

This lack of control over redevelopment and demolition, and the unknowns about the extent and magnitude of additional "hot spots" creates a high level of uncertainty in the level of implementation that cities and counties can commit to during the next five year permit term. In turn, the uncertainty in implementation creates compliance uncertainty when compliance targets in the permit include assumptions regarding the rate of redevelopment and demolition.

Provision C.12 of the Tentative Order uses a framework that is a hybrid of two approaches, requiring: 1) BMP implementation and 2) pollutant load reduction. The required BMPs are Green Infrastructure and managing PCBs-containing materials and wastes during building demolition activities. However, it appears that the primary intent is to require Permittees to demonstrate a total cumulative Bay Area-wide PCBs load reduction of 3 kg/year over the permit term. SCVURPPP's overarching concern is that Provision C.12 continues to fall

well short of providing Permittees with a clear and feasible pathway to attaining compliance with this load reduction requirement.

C.12. PCB Controls– SCVURPPP - #65 - DCB

It is also important to note that the level of effort and associated resources required to implement Provision C.12 as set forth in the Tentative Order is highly uncertain. Much of the cost of implementing PCB control programs during the current permit term was offset by a grant from USEPA that will end in 2016. The availability of grant or other funding for implementing Provision C.12 of the reissued permit is unknown. As a starting point, making all of the below recommended revisions would result in much greater certainty regarding the level of effort and associated resources that would be required to comply with Provisions C.12, and create a much clearer pathway towards complying with the MRP.

C.12.a – Implement Control Measures to Achieve Load Reductions– SCVURPPP - #66 - DCB

The Tentative Order appears to require Permittees to reduce PCBs loads to the Bay by 3 kg/year by the end of the permit term. The approach includes developing an accounting system for Executive Officer approval early in the permit term that would form the basis for the load reductions credited to the various PCBs controls.

- **Issue:** There is a lack of a clear and feasible pathway for Permittees to attain compliance with the load reduction requirements. Most factors that would be key to meeting the criteria are uncertain and many are not within Permittee control (e.g., extent of source properties that will be found, building demolition rates, and redevelopment rates), making achievement of compliance uncertain.

  Requested Revision: Load reduction performance criteria should not be the point of compliance. Compliance should be based upon implementing PCBs control programs designed to achieve a load reduction target (such as a Numeric Action Level or similar mechanism for triggering requirements for additional action and reporting), based on an interim accounting method (see next section). The target would be informed by what the BMP programs could achieve, based on the accounting system, which would agreed upon upfront and incorporated into the permit.

C.12.a – Implement Control Measures to Achieve Load Reductions– SCVURPPP - #67 - DCB

- **Issue:** Several reporting requirements in Provision C.12.a. are unrealistic.
  - Provision C.12.a.iii.(1) - February 1, 2016 report providing "a list of watersheds (or portions therein) where PCBs control measures are currently being implemented and those in which control measures will be implemented (C.12.a.ii.(1)) during the term of this permit as well as the monitoring data and other information used to select the watersheds."
  - Provision C.12.a.iii.(2) - 2016 Annual Report providing "the specific control measures (C.12.a.ii.(2)) that are currently being implemented and those that will be implemented in watersheds identified under C.12.a.iii.(1) and an implementation schedule (C.12.a.ii.(3)) for these control measures. This report shall include: .... [scope, start dates, progress milestones, schedules, roles and responsibilities of Permittees, etc...]....".

  Requested Revision: Extend the deadlines for the above reports to the 2017 Annual Report.

C.12.a – Implement Control Measures to Achieve Load Reductions– SCVURPPP - #68 - DCB

- **Issue:** Significant efforts have been made to-date by Permittees and through the RMP to better understand the distribution of PCBs and mercury in watersheds. PCB hot spots are generally associated with older (pre-1980) industrial areas and other areas where PCBs were used, transported, or managed during the early to mid 20th century. Reductions in the permit are assigned to County Stormwater Programs based on population. PCBs are not directly associated with population. Rather, they are associated with areas where they were used, transported or otherwise managed.

  Although the population of Santa Clara County is equal to or larger than the other three main counties included in the MRP, based on over a thousand sediment and water samples analyzed Baywide, PCBs are not as abundant in the Santa Clara Valley as some other areas. Low levels in

  the Southern Bay Area are likely due to the limited amount of older industrial areas and the fact that development largely occurred after PCBs were phased-out of production.

- **Requested Revision** – If a load reduction target (as a Numeric Action Level) is retained in the permit, Water Board staff should use a better metric than population to allocate load reduction responsibilities, such as the amount of older industrial areas currently present in each County. This revision would more closely correlate with our current understanding of the distribution of

these contaminants in watersheds and more equitably distribute compliance responsibility among different Counties and Permittees.

C.12.b. Assess Load Reductions from Stormwater– SCVURPPP - #69 - DCB

SCVURPPP, other stormwater programs, and Water Board staff recently worked together to develop an interim accounting method. It was intended to provide a basis for stipulated load reduction benefits for implementation of the primary PCBs control programs that Permittees anticipate implementing during the MRP 2.0 permit term (this interim accounting method would be revised before the next permit term). SCVURPPP appreciates that Water Board staff included much of the information developed for the interim accounting method in the fact sheet.

- **Issue**: Values for certain key accounting parameters for managing PCBs-containing materials and wastes during building demolition activities were left out.

  Requested Revision: Include in the interim accounting method values for all parameters to allow for scrutiny during the public permit review process, given the uncertainty in these values. It is especially important to include values for all parameters associated with managing PCBs-containing materials and wastes during building demolition activities, including the fraction of PCBs mass in a building that enters the MS4 during demolition in the absence of enhanced controls, which is particularly uncertain. Stormwater programs can also provide similar values for mercury to include in the fact sheet as well.

C.12.b. Assess Load Reductions from Stormwater– SCVURPPP - #70 - DCB

- **Issue**: Requirement to formally submit load reduction assessment methodology early in the permit term for Executive Officer approval creates uncertainty in the load reduction benefit for each PCBs control program.

  Requested Revision: Omit the requirement to submit load reduction accounting method early in the permit term. Instead, the interim accounting method should be finalized, incorporated into the permit, and then used to calculate PCBs load reductions during Permittee annual reporting.

C.12.b. Assess Load Reductions from Stormwater– SCVURPPP - #71 - DCB

- **Issue**: Water Board staff has acknowledged that load reduction performance criteria are not numeric effluent limits. This should be made clear in the permit. In addition, further clarity is needed regarding the legal definition of the performance criteria and implications with regard to enforcement and potential third party lawsuits.

  Requested Revision: PCB load reduction performance criteria should be in the form of Numeric Action Levels or a similar mechanism for triggering requirements for additional action and reporting. In addition, the permit should include contingency language that would allow for achieving compliance if a good-faith demonstration of efforts and actions by Permittees consistent with permit requirements falls short of achieving the load reduction performance criteria.

C.12.b. Assess Load Reductions from Stormwater– SCVURPPP - #72 - DCB

- **Issue:** Provision C.12.b.iii requires that Permittees submit Permittee-specific proportions of load reduction responsibilities and supporting data to the Water Board by April 1, 2016 – four months after the effective date of the permit. Although Permittees and the RMP have spent considerable time and resources towards identifying PCB hot spots and watersheds producing greater levels of PCBs to the Bay, data have not been collected at a level to which proportions of load reduction responsibilities could confidently be assigned to Permittees. Furthermore, assigning Permittee-specific responsibilities with high levels of uncertainty upon which compliance could be based is not good public policy and could inadvertently unduly place

responsibilities upon certain Permittees requiring the spending of public resources towards fictitious goals not based in reality.

Requested Revision: Delete requirement to develop and submit Permittee-specific proportions of load reduction responsibilities.

C.12.c. Plan and Implement Green Infrastructure to Reduce PCBs Loads– SCVURPPP - #73 - DCB

Provision C.12.c of the Tentative Order requires Permittees to implement Green Infrastructure projects during the term of the permit to achieve PCBs load reductions of 120 g/year over the final three years of the permit term. Additionally, Permittees are required to prepare a reasonable assurance analysis to demonstrate quantitatively that PCB load reductions of at least 3 kg/yr throughout the Permit area will be achieved by 2040 through implementation of Green Infrastructure plans required by Provision C.3.j.

- **Issue**: It is unnecessary to include performance criteria for PCBs load reductions through implementation of GI over the reissued permit term. PCBs load reductions will not be the driver for GI implementation during the reissued permit term. Regional Water Board staff has noted that based on extrapolation of data from the current permit term, the proposed metrics should be met via redevelopment in old industrial areas. Thus the proposed criteria would not influence GI implementation during the reissued permit term and meeting them would instead be dependent upon an activity that is not under Permittee's control. While we expect to learn valuable lessons via opportunistic early implementation of GI retrofit projects through Provision C.3.j.ii, the pollutant load reductions associated with these retrofits implemented over MRP 2.0 is anticipated to be relatively small.

  Requested Revision: Provision C.12.c should be deleted.

C.12.c. Plan and Implement Green Infrastructure to Reduce PCBs Loads– SCVURPPP - #74 - DCB

- **Issue**: It does not make sense to prejudge that PCBs load reductions of at least 3 kg/yr throughout the Permit area should be achieved by 2040 through implementation of Green Infrastructure plans. The actual load reductions that Permittees expect to achieve via Green Infrastructure will be determined during the planning and reasonable assurance analysis required by Provision C.12.d., as part of planning for achieving the overall PCBs TMDL allocations.

  Requested Revision: Provision C.12.c should be deleted.

C.12.f. Manage PCB-containing Materials and Wastes during Building Demolition– SCVURPPP - #75 - DCB

Provision C.12.f requires development of a program to manage PCBs in building materials and wastes during demolition. Given the large standing stock of PCBs known to be present in certain buildings in the Bay Area, there could potentially be significant benefits to implementing the proposed control program. However, we are not aware that any data exist regarding the amount of PCBs-containing materials that are released to the ground during demolition and then mobilized into the MS4 by urban runoff, making it challenging to project with any certainty the actual water quality benefit of the proposed control program. Cost-effectiveness relative to other PCBs controls is also highly uncertain at this time.

- **Issue**: The various potential problems associated with PCBs in building materials (i.e., water quality, human exposure at the site, and disposal) should be addressed holistically on a statewide or federal basis rather than focusing on water quality controls in the Bay Area only. Meeting the Tentative Order's three year timeframe to develop a program to manage PCBs in building materials and wastes during demolition would likely require administration at the local level.

This inappropriate and rushed approach would result in highly inefficient use of scarce public funds and likely be ineffective at comprehensively addressing the problems. It would also likely result in inconsistent programs across the Bay Area.

Recommended Solution: Allow at a minimum the entire permit term for Permittees to work with the State, USEPA, the building industry, and other stakeholders to attempt to develop a comprehensive statewide or federal program analogous to current programs for asbestos and lead paint. Given the multiple environmental and public health issues in play, USEPA should play a large role in development of this program.

Attachment A, continued

C.13 – Copper Controls– SCVURPPP - #76 - DCB

Provision C.13.b - Manage Discharges from Pools, Spas, and Fountains that Contain Copper-Based Chemicals

- **Issue:** This provision contains new reporting requirements that require duplicative reporting of enforcement activities reported under Provision C.4 and C.5. Permittees are now required to report annually on any enforcement activities associated with this provision.
- **Requested Revision:** Reference other provisions where Permittees may more efficiently report permitting and enforcement activities.

C.15. Conditionally Exempted Discharges

C.15.b – Conditionally Exempted Non-Stormwater Discharges– SCVURPPP - #77 - DCB

- **Issue:** There is no evidence in the record or otherwise available that suggests the Santa Clara Program's existing conditionally exempt non-emergency planned and unplanned potable water discharge program is not effective, or that to continue to protect water quality, the Co-permittees require regulation in an alternative manner through State Water Board Order WQ 2014-0194-DWQ (State NPDES Permit for Drinking Water System Discharges), which represents a second, separate, and, as to their discharges, completely unnecessary NPDES permit. The State Permit was, in fact, specifically amended prior to adoption to provide that drinking water system discharges which are or can be addressed through a municipal stormwater permit issued by a Regional Water Board will be regulated in that manner so as to avoid a situation where a municipality has to obtain separate coverage under two permits and pay two separate permit fees or be on two separate reporting cycles.

  In responding to public comments, the State Water Board directed all Regional Water Boards to continue to specify potable discharge requirements in municipal stormwater permits and, on a going-forward basis, it left it up to them as to how best to craft such requirements: "[The State Water Board] takes no position on provisions or requirements within specific permits for MS4 owners and operators who are also water purveyors and whose MS4 permits also authorize drinking water discharges. Regional Water Boards adopting such permits *are charged with* determining appropriate requirements to protect water quality and address the needs of both the MS4 and drinking water discharges on a system-specific basis."

  Requested Revision - The Water Board should either restore Provisions C.15.b.iii (1) and (2) from the current MRP or craft new sub-provisions that would specify that "Potable water discharges that meet the Discharge Specifications set forth in Section IV.A or the Multiple Uses or Beneficial Reuse terms set forth in Section VI of the Statewide General NPDES Permit for Drinking Water Systems Discharges, Order WQ 2014-0194-DWQ shall be deemed to be conditionally exempt provided that the Permittees maintain records of these discharges, BMPs implemented, and any monitoring data collected."

MRP 2.0 Tentative Order Errata Sheet

Findings

- Existing Permit #5, Line 7: The date "February 25, 2005" is incorrect. Change to May 29, 2014.

C.3.a – New Development and Redevelopment Performance Standard Implementation

- C.3.a.ii Implementation is missing. The numbering goes from C.3.a.i Task Description to C.3.a.iii. Reporting

C.3.b.iv – Reporting

- C.3.b.iv.(1)(m)(i)&(ii) – There is no C.3.b.v. in the Tentative Order. Change to read C.3.b.iv.(a)-(l). This occurs several times in Provision C.3. All references to C.3.b.v. should be changed to C.3.b.iv.

C.3.c - LID

- C.3.c.i(d) – The reference to C.3.b.v should be changed C.3.c.i(2)(c).

- C.3.c.ii Implementation is missing. The numbering goes from C.3.c.i Task Description to C.3.c.iii. Reporting.

C.3.e – Alternative or In-Lieu Compliance with Provision C.3.b.

- C.3.e.ii.(5)(d) and C.3.e.ii.(5)(e) – reference to C.3.e.ii.(4)(c) should be changed to C.3.e.ii.(5)(c)

C.3.g- Hydromodification Management

- C.3.g.i – Move items (1) through (3) to after the first paragraph, in which they are referenced.
- C.3.g.ii.(3) – change "charges" to "charts" in the first sentence.
- C.3.g.vii.(5) – delete the last bullet that refers to the Impracticability Provision, which is not included in the Tentative Order.
- Attachment A–Fact Sheet, Background for C.3.g, page A-35 – Remove sentence "As a result, the Permit retains the Previous Permit's impracticability criteria and options."
- Attachment A-Fact Sheet, Provision C.3.g.iii – refers to acceptance by Executive Officer, which is inconsistent with Permit Provision C.3.g.iii, which requires a permit amendment.

C.3.h - Operation and Maintenance of Stormwater Treatment Systems

- C.3.h.ii.(7) – begin first sentence with "Permittees shall prepare and maintain.."
- C.3.h.v.(4) – Change "XX" Annual Report to "2017" Annual Report.

C.3.j – Green Infrastructure Planning and Implementation

- C.3.j.i (1) – Last sentence, "Prepare a Green Infrastructure Plan that contains the following elements:" should start a new section (2) followed by the elements (a) – (k).
- C.3.j.i (4)(a) – Change "XX" Annual Report to "2017" Annual Report.
- C.3.j.ii (2) – "Submit the list with each Annual Report and a summary of planning or implementation status for each green infrastructure project, and a summary of how each infrastructure project with green infrastructure potential ~~will be implemented~~ will include green infrastructure measures to the maximum extent practicable during the permit term."

C.4.b. – Industrial and Commercial Business Inspection Plan

- C.4.b.iii. Reporting **-** Summary of Changes states that the requirement to submit list of facilities requiring inspection with Annual Report was deleted, but this section still requires that the list of all facilities requiring inspection be included with the Annual Report.

C.7. a. – Storm Drain Marking

- C.7.a. iii. - Refers to "…privately maintained streets that did not trigger the exemptions in Provision C.3.c.ii…" – There is no Provision C.3.c.ii in the TO. Should correct or delete reference.

C.8.d.i (Biological Assessment) and C.8.d.i (Chlorine)

- There are two sections C.8.d.i. - renumber C.8.d subsections.

C.8.f.ii - Table 8.4 POC Monitoring Parameters, Effort and Type

- Fix the typo in Column C of the toxicity row on Table 8.4 from 20 to 10.

C.9.c - Require Contractors to Implement IPM

- C.9.c.i – The Permittees shall hire IPM-certified contractors ~~and~~ or include contract specifications requiring contractors to implement IPM.

C.10.b.ii - Visual Assessment of Outcomes of Other Trash Management Actions

- C.10.b.ii (b) – Refers to" Permittees shall conduct visual on-land assessment, including photo documentation, or other acceptable assessment method (see C.10.b.ii(v)). There is no provision C.10.b.ii(v). Should correct or delete reference.

C.11.a.- Implement Control Measures to Achieve Mercury Load Reductions

- C.11.a.iii (2) – "The Permittees shall report in their 2016 Annual Report the specific control measures (C.11.a.ii(2)) that are currently being implemented and those that will be implemented in watersheds identified under ~~C.11.a.iii(1).~~ C.11.a.ii(1)."

- C.11.a.iii (2)(d) – "Clear statements of the roles and responsibilities of each participating Permittee for implementation of pollution prevention or control measures identified under ~~C.11.a.iii(1)~~ C.11.a.ii**(**2)."

C.11.c. - Plan and Implement Green Infrastructure to Reduce Mercury Loads

- C.11.c.ii (1) – "Permittees shall implement sufficient green infrastructure projects to achieve county-specific load reduction performance criteria shown in Table 11.1 and demonstrated achievement of these load reductions by using the accounting methods established according to provision ~~C.11.b.ii(1)~~ C.11.b.ii.

- C.11.c.ii (1) – Refers to "Permittees shall report on the amount of mercury load reduction benefit associated with a unit of activity of green infrastructure control measure implementation as part of C.11.b(1)." - There is no provision C.11.b(1). Should probably be C.11.c.i.

- C.11.c.ii (1) - "Those Permittees will be deemed in compliance if they have achieved load reductions consistent with their proportion of the county total (report under ~~C.12.b.ii**(**1))~~ C.11.b.iii(1)."

- C.11.c.ii (2)(e) – "Ensure that the calculations methods, models, model inputs, and modeling assumptions used to fulfill ~~C.11.c.ii(1-4)~~ C.11.c.ii(2)a-d have been validated through a peer review process."

- C.11.c.iii (1) – "The Permittees shall submit in their 2017 Annual Report (as part of reporting for ~~C.11.b.ii(1)).~~ C.11.b.iii**(**1)."

- C.11.c.iii (4) – "The Permittees shall submit as part of reporting for ~~C.11.b.ii(2).~~ C.11.b.iii(2)."

C.12.a - Implement Control Measures to Achieve PCBs Load Reductions.

- C.12.a.ii (4) - "Permittees shall report on their method for assigning Permittee-Specific load fractions by April 2016 (see ~~C.12.b(1)~~ C.12.b.iii(1)below)."

- C.12.a.iii(2) – "The permittees shall report in their 2016 Annual Report the specific control measures (C.12.a.11(2)) that are currently being implemented and those that will be implemented in watersheds identified under ~~C.12.a.iii(1)~~ C.12.a.ii(1) and an implementation schedule (C.12.a.ii(3)) for these control measures.

- C.12.a.iii(2)(e) - Clear statements of the roles and responsibilities of each participant Permittee for implementation of pollution prevention or control measures identified under ~~C.12.a.ii~~**(1)**. C.12.a.ii(2)

C.12.c - Plan and Implement Green Infrastructure to reduce PCBs Loads

- C.12.c.ii(1) – Refers to "PCBs load reductions..... overall load reductions required during this permit term under C.12.a.ii(4)." There is no provision C.12.a.ii(4). Should probably be C.12.a.ii.

- C.12.c.ii(1): Refers to "If both the area-wide..... established under C.12.b.ii(1). ". There is no provision C.12.b.ii(1). Should probably be C.12.b.iii(1).

- C.12.c.iii(1): Refers to "..., as part of reporting for C.12.b.ii(1)". There is no provision C.12.b.ii(1). Should probably be C.12.b.iii(1)

- C.12.c.iii(4): Refers to "The permittees shall submit as part of reporting for C.12.b.ii(2)." There is no C.12.b.ii(2). Should probably be C.12.b.iii(2).

C.15.b.Conditionally Exempted Non-Stormwater Discharges

- C.15.b.i(1)(a)(ii): "U.S. EPA methods to meet..... discussed in ~~C.**14.**(b)i.(1)(a)(i)~~ C.15.(b)i.(1)(a)(i)."

- C.15.b.i(2)(c): "....sampling completed in ~~C.15.b.i(2)(c)~~ C.15.b.i(2)(b).

- C.15.b.i(2)(d): "....with the criteria in ~~C.15.b.i.(2)**(b)**(i)-(vii)~~ C.15.b.i.(2)**(c)**(i)-(vii)."

PROVISION	REMAINING ISSUES	RECOMMENDED REVISIONS
C.11/12 – Mercury and PCBs Controls		
C.12.a – Implement Control Measures to Achieve Load Reductions– SCVURPPP - #78 - DCB	Lack of clear and feasible pathway for Permittees to attain compliance with the load reduction requirements. Most factors that would be key to meeting the criteria are uncertain and many are not within Permittee control (e.g., extent of source properties that will be found, building demolition rates, and redevelopment rates), making achievement of compliance uncertain.	Load reduction performance criteria should not be the point of compliance. Base compliance upon implementing PCBs control programs designed to achieve the load reduction performance criteria, based on the interim accounting method (see next section).
C.12.b – Assess Load Reductions from Stormwater– SCVURPPP - #79 - DCB	BASMAA and RWB staff recently worked together to develop an interim accounting method. It was intended to provide a basis for stipulated load reduction benefits for implementation of the primary PCBs control programs that Permittees anticipate implementing during the MRP 2.0 permit term (this interim accounting method would be revised before the next permit term). BASMAA appreciates that RWB staff included in the fact sheet much of the information developed for the interim accounting method. However, values for certain key accounting parameters for managing PCBs-containing materials and wastes during building demolition activities were left out.	Include in the interim accounting method values for all parameters to allow for scrutiny during the public permit review process, given the uncertainty in these values. It is especially important to include values for all parameters associated with managing PCBs-containing materials and wastes during building demolition activities, including the fraction of PCBs mass in a building that enters the MS4 during demolition in the absence of enhanced controls, which is particularly uncertain.

	C.12.b – Assess Load Reductions from Stormwater– SCVURPPP - #80 - DCB Requirement to formally submit load reduction assessment methodology early in the permit term for Executive Officer approval creates uncertainty in the load reduction benefit for each PCBs control program.	Omit the requirement to submit load reduction accounting method early in the permit term. Instead, the interim accounting method should be finalized, incorporated into the permit, and then used to calculate PCBs load reductions during Permittee annual reporting.
	C.12.b – Assess Load Reductions from Stormwater– SCVURPPP - #81 - DCB RWB staff has acknowledged that load reduction performance criteria are not effluent limits. This should be made clear in the permit. In addition, further clarity is needed regarding the legal definition of the performance criteria and implications with regard to enforcement and potential third party lawsuits.	PCBs load reduction performance criteria should be in the form of action levels. In addition, the permit should include contingency language that would allow for achieving compliance if a good-faith demonstration of solid efforts and actions by Permittees consistent with permit requirements falls short of achieving the load reduction performance criteria.

PROVISION	REMAINING ISSUES	RECOMMENDED REVISIONS
C.12.f. Manage PCB-containing Materials and Wastes During Building Demolition – SCVURPPP - #82 - DCB	The various facets of this issue (i.e., water quality, human exposure at the site, and disposal) should be addressed holistically on a statewide or federal basis rather than focusing on water quality BMPs in the Bay Area only. Meeting the Tentative Order's three year timeframe to develop a program to manage PCBs in building materials and wastes during demolition would likely require administration at the local level. This inappropriate and rushed approach would result in highly inefficient use of scarce public funds and likely be ineffective at comprehensively addressing the problems. It would also likely result in inconsistent programs across the Bay Area.	Allow at a minimum the entire permit term for Permittees to work with the State, USEPA, the building industry, and other stakeholders to attempt to develop a comprehensive statewide or federal program analogous to current programs for asbestos and lead paint. Given the multiple environmental and public health issues in play, USEPA should play a large role in development of this program.
C.11/12– SCVURPPP - #83 - DCB	In general, the compliance timelines presented in the various sections of C.12 are too short. Many of the required submittal and/or completion deadlines would be extremely difficult, if not infeasible, to meet. For example, provision C.11 and C.12.a.iii.(1) requires a list of watersheds (or portions therein) where mercury and PCB control measures are currently being implemented and those in which control measures will be implemented. Additionally, provision C12.a.ii.(4) required the reporting of "Permittee-specific load fractions" for PCBs reductions by April 2016.	Work with BASMAA to develop more realistic report/plan submittal and compliance timelines.
	C.11/12– SCVURPPP - #84 - DCB The level of effort and associated resources required to implement Provisions C.11/12 of the reissued permit are currently unknown but could be dramatically higher than implementing MRP 1.0 Provisions C.11/12. Much of the cost of implementing MRP 1.0 Provisions C.11/12 was offset by a grant from USEPA that will end in 2016. The availability of grant or other funding for implementing MRP 2.0 Provisions C.11/12 is uncertain.	As a starting point, making all of the above recommended revisions would result in much greater certainty regarding the level of effort and associated resources that would be required to comply with Provisions C.11/12.
C.3 – Green Infrastructure (POC-related)		
C.3.j - Green Infrastructure– SCVURPPP - #85 - DCB	In general, this provision continues to be the most challenging and most uncertain portion of C.3 in terms of what will constitute compliance. The language needs to be more consistent with the expectations in Provisions C.11 and C.12. Discussions with Water Board staff on C.11 and C.12 have suggested that load reductions can be accomplished by public retrofits and private development and redevelopment, whereas C.3.j only refers to public retrofits.	Make more explicit in C.3.j (as well as in C11/12) that private development and redevelopment as well as public projects will count toward meeting POC load reductions. Efforts during the MRP 2.0 term should focus on planning and opportunistic implementation where feasible.
C.3.j.i.(1)(a) – GI Plan– SCVURPPP - #86 - DCB	Prioritization and mapping of potential and planned projects will be a major, resource-intensive effort, which may not be completed within 2 years. Additional flexibility in approaches to mapping and prioritization is needed. In addition, the time intervals for planning should be aligned with fiscal years, and made consistent	The mechanisms used to develop the Plan and priorities should include other less complex tools in addition to GreenPlan-IT. The time intervals should be

PROVISION	REMAINING ISSUES	RECOMMENDED REVISIONS
	with the time intervals for load reductions in C.11/12 (i.e., 2020 and 2030).	changed to FY 19-20, FY 24-25, and FY 29-30.
C.3.j.i.(1)(c) – GI Plan– SCVURPPP - #87 - DCB	The timeframes for establishing "targets" for amount of impervious surface retrofitted do not line up at all with the C.11/12 load reduction timeframes. It is unclear how these targets are to be established by each Permittee.	Allow the development of "projections" instead of "targets", and allow Permittees to include projected private development as well as public projects. Allow the projections to be developed for the years 2020, 2030, 2040, and 2065, consistent with C.11/12.
C.10 – Trash Load Reduction		
C.10.a – Trash Reduction Requirements– SCVURPPP - #88 - DCB	Mandatory Reduction Time Schedule – 70% load reduction by 2017 is too rigorous of a time schedule and should be extended. Reductions become increasingly more challenging and more time is therefore needed to find/implement sustainable control measures.	Extend 70% load reduction time schedule to 2018.
	C.10 SCVURPPP-#89-DCB Private Drainages – Requirement to map and assess ALL private drainages 5,000 ft^2 and above is a significant undertaking that would result in minimal water quality benefit. Need alternative approach to addressing private drainages.	Integrate inspections and enforcement of high priority private drainage areas into C.4 programs (Industrial and Commercial Site Controls).
	C.10 SCVURPPP-#90-DCB C.3 Facilities as Full Capture Systems – Requirement to screen overflow pipes on C.3 facilities before considering full capture system is problematic and inconsistent with the full capture definition.	Make C.3 facilities equivalent to full capture systems without screens.
C.10.b – Trash Reduction Outcomes – SCVURPPP - #91 - DCB	Full Capture System Maintenance – Prescriptive maintenance frequencies for systems based on trash generation categories is inconsistent with the experience of Permittees. Maintenance frequencies are site specific and affected by the amount of vegetative materials and debris reaching the device and the size of the inlet vault, not the amount of trash generated.	Require Permittee-specific maintenance program to be implemented and adapted accordingly to achieve/maintain full capture criteria.
	C.10.b – Trash Reduction Outcomes – SCVURPPP - #92 - DCB Value of Source Controls – Maximum of 5% reduction for implementing source controls is too low and inconsistent with information collected to-date.	Increase maximum to 20% reduction for source controls, with supporting evidence.

PROVISION	REMAINING ISSUES	RECOMMENDED REVISIONS
C.10. – Trash – SCVURPPP - #93 - DCB	Receiving Water Monitoring – Intent of receiving water monitoring downstream of areas converted to low generation remains unclear. Requirement that locations of sites have to be downstream of areas converted to low generation implies that compliance with MS4 reductions will be determined in the future via receiving water monitoring.	Revise language to state that purpose is "…to evaluate the level of trash present in receiving waters over time, and to the extent possible determine 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)."
C.10.e – Optional Offsets– SCVURPPP - #94 - DCB	Additional Creek and Shoreline Cleanup – Maximum of 5% offset for these important actions is too small. Ratio of trash removed to offset (i.e., 10:1) is too large. Requirement for cleanups to occur a minimum of 2x at a site creates inflexibility and is too constraining.	Increase maximum to 10% for additional creek/shoreline cleanups. No minimum on cleanup frequency at a site. Reduce ratio to 3:1.
	Direct Trash Discharge Controls – Maximum of 10% offset for these important actions is too small. Ratio of trash removed to offset (i.e., 10:1) is too large.	Omit maximum % reduction value for direct discharge control program. Reduce ratio to 3:1.
C.3 – New and Redevelopment (Other Issues)		
C.3.b.i - Regulated Projects– SCVURPPP - #95 - DCB	This provision now requires any Regulated Project that was approved "pre-C.3" (i.e., with no stormwater control plan) and has not begun construction to comply with LID treatment requirements. Permittees are concerned that they do not have the legal authority to impose new requirements on an entitled project, and they will not be able to comply with this requirement.	Delete requirement – it will apply to a relatively small number of projects and a small percentage of impervious surface created/replaced in the region. One compromise is to allow the use of non-LID treatment at these projects, which would be easier to incorporate into an approved site design, but this does not address the legal issue.
C.3.j.i.(1) – GI Framework – SCVURPPP - #96 - DCB	The GI framework has to be developed and approved by local governing bodies within one year (by 12/1/16) and then reported in the 2017 Annual Report (9/15/17). This is a very short timeframe given the effort required to coordinate and educate upper level staff and elected officials, prepare the framework, conduct resource planning, and accommodate lead times for bringing the framework to governing bodies.	Extend the timeframe for approval to the reporting date (9/15/17), which would provide an additional 9 months.

PROVISION	REMAINING ISSUES	RECOMMENDED REVISIONS
C.3.j.ii. - Early Implementation– SCVURPPP - #97 - DCB	It is unclear how compliance with this section will be determined. The review process needs to be more defined and objective, in order to avoid disagreements with WB staff as to what are "missed opportunities".	Add proposed language (provided in early input to the MRP 2.0 Administrative Draft, as shown in the footnote below)[1] that would allow for consistent review of CIP projects for GI opportunities, based on specified criteria.

[1] Proposed language: "Permittees shall review and analyze appropriate projects within the Permittee's capital improvement program, and for each project, assess the opportunities and associated costs of incorporating LID into the project. The analysis shall consider factors such as grading and drainage, pollutant loading associated with adjacent land uses, uses of available space with the project area, condition of existing infrastructure, opportunities to achieve multiple benefits such as providing aesthetic and recreational resources, and potential availability of incremental funding to support LID elements along with other relevant factors. Permittees will collectively evaluate and develop guidance on the criteria for determining practicability of incorporating green infrastructure measures into planned projects."

MORRISON | FOERSTER

425 MARKET STREET
SAN FRANCISCO
CALIFORNIA 94105-2482

TELEPHONE: 415.268.7000
FACSIMILE: 415.268.7522

WWW.MOFO.COM

MORRISON & FOERSTER LLP

BEIJING, BERLIN, BRUSSELS, DENVER, HONG KONG, LONDON, LOS ANGELES, NEW YORK, NORTHERN VIRGINIA, PALO ALTO, SACRAMENTO, SAN DIEGO, SAN FRANCISCO, SHANGHAI, SINGAPORE, TOKYO, WASHINGTON, D.C.

July 9, 2015

Writer's Direct Contact
415.268.6294
RFalk@mofo.com

By Email (mrp.reissuance@waterboards.ca.gov) and Overnight Delivery

MRP Tentative Order Comments
Attn. Dale Bowyer
S.F. Bay Water Board
1515 Clay Street, Suite 1400
Oakland, California 94612

Re: **Public Comment Submission -- Draft Municipal Regional Stormwater Permit**

On behalf of the Santa Clara Valley Urban Runoff Pollution Prevention Program ("Santa Clara Program") and its member co-permittees,[1] the following are legal comments concerning the Proposed Tentative Order ("TO") and accompanying documents (including Fact Sheet) for reissuance of the Municipal Regional Stormwater NPDES Permit ("MRP" or "Draft Permit") as released for public comment on May 11, 2015.[2]

OVERVIEW: The Draft Permit, while ambitious and containing requirements reaching beyond the maximum extent practicable standard set forth in Section 402(p) of the Clean Water Act, represents a highly laudable effort by the Water Board's staff and is largely worthy of support by members of both the environmental and regulated communities and the public at-large. Accordingly, subject to requested clarifications being made and several legal issues being resolved as discussed below, the Santa Clara Program and its members are generally appreciative and supportive of the Draft Permit.

General – SCVURPPP Legal #1 – STL

LEGAL COMMENT No. 1 (Permit v. Fact Sheet Issue): Notwithstanding the feedback presented above concerning the Draft Permit, the Santa Clara Program and its members take issue with several aspects of the Fact Sheet. Among other things, they specifically object to

[1] The Program member co-pemittees are: Campbell, Cupertino, Los Altos, Los Altos Hills, Los Gatos, Milpitas, Monte Sereno, Mountain View, Palo Alto, San Jose, Santa Clara, Saratoga, Sunnyvale, Santa Clara County, and the Santa Clara Valley Water District. The Santa Clara Program will be submitting additional non-legal comments under its own letterhead, and many of the co-permittees may be submitting separate comments as well.

[2] The Santa Clara Program also supports the legal comments being submitted by Gary Grimm on behalf of the Alameda Program.

having the reissued MRP incorporate the Fact Sheet by reference rather than to merely refer to the Fact Sheet's availability and existence. Incorporation of the Fact Sheet is, in fact, legally inappropriate – under the NPDES regulations, a fact sheet is only supposed to "accompany" a draft permit and set forth facts and describe questions considered in preparing it; it is not supposed to piecemeal the permit and contain what amounts to additional findings or requirements themselves. See 40 C.F.R. §§ 124.6, 124.8.

General – SCVURPPP Legal #2 – STL

LEGAL COMMENT No. 2 (Unfunded State Mandates Issues): The Fact Sheet's lengthy discussion of State Mandates, which appears to merely repeat the State Water Board's conclusory litigation advocacy position on these issues, goes well beyond the scope of 40 C.F.R. §§ 124.6, 124.8 and should be deleted. This is particularly the case in light of the California Supreme Court's impending decision in *Department of Finance, et al. v. Commission on State Mandates/County of Los Angeles, et al*., Case No. S214855, which will clarify, among other things, that jurisdiction to determine what aspects of the Draft Permit constitute unfunded state mandates properly rests with the Commission on State Mandates and not with the State's Water Boards.

In addition (and even if the California Supreme Court's decision is otherwise), in its recent final rule defining the "Waters of the United States," U.S. EPA has expressly *excluded* from the reach of the jurisdictional boundaries of the Clean Water Act (and, hence, the NPDES permitting program) numerous areas that are subject to requirements in the T.O., including, among others, pools and erosion and other control features constructed on land in order to convey, treat, or store stormwater. 80 Fed. Reg. 37054, 37096-37101 (June 29, 2015). Therefore, to the extent the reissued MRP imposes requirements that reach to such now-clearly excluded non-jurisdictional areas and features, such requirements arise from state rather than federal law and are subject to subvention under the State's unfunded mandates initiative, as well as to the need for analysis under Water Code Section 13241/13243 and the California Environmental Quality Act (CEQA).[3]

C.1. – SCVURPPP Legal #3 – STL

LEGAL COMMENT No. 3 (Finding 11 Clarification Issue): To avoid ambiguity that could result in years of unnecessary resource-draining litigation through the courts similar to that previously experienced in Southern California, the T.O.'s Finding 11 needs to be further clarified with respect to the relationship between Draft Permit Provisions A.2, B.1-B.2, and C.1. More specifically, Finding 11 should be expanded or supplemented to recognize the State Water Board's June 16, 2015 adoption of precedent order WQ-2015-0075 concerning Receiving Water Limitations ("State RWL Order"), and it should expressly state that, consistent with guiding principles set forth in the State RWL Order, Provisions C.1 and

[3] The Santa Clara Program and its members reserve all their rights to pursue unfunded mandate challenges to a reissued MRP under applicable law, including as it may be further clarified by the California Supreme Court.

They also wish to ensure that the record is clear that they have not waived such rights, including by volunteering through their comments, prior suggestions, previous actions, permit re-applications, or generally strong desire to cooperate with the Water Board's staff, to be deemed to have voluntarily accepted any of the new program or higher level of service requirements contained in the T.O., including without limitation Provisions C.3.j, C.10.a.i., C.10.a.ii.b, C.10.b.i.a and b, C.10.b.v, C.11.c, C.12.c., C.12.f.

C.9-14 are designed to provide the co-permittees with an alternative compliance pathway relative to Receiving Water Limitations B.1 and B.2 and Discharge Prohibition A.2 with respect to pesticides, trash, mercury, polychlorinated biphenyls, copper and bacteria.

C.1. – SCVURPPP Legal #4 – STL

LEGAL COMMENT No. 4 (Provision C.1 Clarification Issue): As it reinforces and clarifies this Water Board's longstanding approach in municipal stormwater permitting relative to the management of pollutants of concern and exceedances of water quality standards and will thereby help avoid unnecessary litigation, the Santa Clara Program and its members strongly support Provision C.1's recognition that compliance with Provisions C.9-C.14 will constitute compliance with Receiving Waters Limitations B.1 and B.2 and that compliance with Provision C.10 will further constitute compliance with Discharge Prohibition A.2. The second sentence of Provision C.1 should, however, end immediately after "Receiving Water Limitations B.1 and B.2" as the words beyond that point are unnecessary, confusing, and could give rise to resource-draining litigation. Consistent with its intent and all prior municipal stormwater permits issued by this Water Board, to further avoid unnecessary litigation, the reference in the third sentence to "Discharge Prohibition A.2" should be changed to "A.1 and A.2." Finally, the word "copper" appears to have inadvertently omitted from the list of pollutants of concern in the last sentence of the first paragraph in Provision C.1 and should be restored there.

C.1. – SCVURPPP Legal #5 – STL

LEGAL COMMENT No. 5 (Provision C.14 Clarification Issue): So as to avoid unnecessary and resource-draining litigation and more fully effectuate the alternative compliance pathway set forth in Provision C.1 for water quality standard exceedances involving bacteria, Provision C.14 needs to be clarified to define the co-permittees' compliance obligations relative to receiving waters *other than* San Pedro Creek and Pacifica State Beach. This could be accomplished by addition of a new subprovision in C.14 that delineates such "For Other Receiving Waters" bacteria-related requirements. Alternatively, since Provision C.8.d.vi. already delineates detailed requirements for investigating pathogen (including Enteroccoci and *E. coli*) contamination in local creeks and areas where water-contact recreation is likely, allocates responsibility for addressing such requirements among co-permittees, and defines a quantitative performance criteria to trigger follow up action under C.8.e, the same result might more easily be accomplished through the addition of a very short additional statement in the opening paragraph of Provision C.14 which speaks to the co-permittees' responsibilities for other receiving waters and then just provides a summary cross-reference to Provision C.8.d.vi.

C.10. – SCVURPPP Legal #6 – STL

LEGAL COMMENT No. 6 (Provision C.10 Trash Issues): The Santa Clara Program and its members recognize the importance of better trash control to this Water Board and the Bay

Area community and are generally supportive of T.O. Provision C.10. However, while it improves over the current MRP's parallel provision, there remain a number of legal issues with regard to it. First, as per Legal Comment No. 4 (and since it covers both the wet and dry seasons), to reduce the potential for unnecessary litigation about it, at its outset, Provision C.10 should reference Discharge Prohibition A.1 in addition to A.2.

Second, as was true under the current MRP and noted under Legal Comment No. 2 above, because Provision C.10 extends its requirements beyond the jurisdiction of the Clean Water Act as recently clarified by US EPA, it reaches beyond the NPDES program's confines and, to this extent, requires a not-yet-provided analysis of technical feasibility and economic reasonableness pursuant to Sections 13263 and 13241 of the Water Code as well as potential analysis under CEQA.

Third, even if it was contemplated under the current MRP and is consistent with the prior long term vision of the Water Board, the increase of an actual trash reduction requirement from 40% to 70% from 2009 levels by July 1, 2017 in Provision C.10.a clearly represents a new requirement and/or calls for a higher level of service. It therefore constitutes an unfunded mandate and should be conditioned on the co-permittees' prior receipt of State- provided funding for the programs necessary to reduce trash loadings by an additional 30%.[4]

Finally, the requirement for achieving 100% trash reduction/no adverse impact by July 1, 2022, in Provision C.10.a (which is described as a "mandatory deadline" rather than as a long term target) illegally extends beyond the five year term of this NPDES permit cycle (see Water Code Section 13378) and should be deleted or restated to just represent an aspirational future goal.

LEGAL COMMENT No. 7 (Provision C.11 and C.12 Mercury and PCB Issues):

C.11. and C.12. – SCVURPPP Legal #7A – STL

While not seeking to legally challenge them when they were adopted, the Santa Clara Program and its members have long questioned the technical basis and feasibility of the total maximum daily loads ("TMDLs") and associated allocation/implementation plans and timetables adopted by the Water Board for mercury and PCBs. These TMDLs deal with legacy pollutants already in the Bay. Trying to achieve massive load reductions in current discharges to offset what is already in the receiving water as the result of historical activities through the imposition of requirements on current discharges simply is unrealistic and will not lead to attainment of water quality objectives within the timetables the TMDLs contemplate. These TMDLs fundamentally need to be revisited and revised under the adaptive management principles as was expressly contemplated at the time of their adoption. The sooner such revision occurs, the better, so that more realistic, technically feasible, and economically achievable municipal stormwater permit requirements can be better calculated.

Without deemphasizing the critical importance of the above, the Santa Clara Program and its

members are not conceptually adverse to the general approach reflected in T.O. Provisions C.11 and C.12, and they appreciate that these Provisions recognize that green infrastructure

[4] Relative to the preceeding paragraph, the Water Board has also not shown that this large trash loading reduction increment is technically feasible or economically reasonable.

is likely the best way to address mercury and PCB impairment in the Bay over time.[5] However, as discussed further below, Provisions C.11 and C.12 (and the related explanations of them in the Fact Sheet) must be significantly clarified to withstand legal muster.

C.11. and C.12. – SCVURPPP Legal #7B – STL

First, as currently drafted, the references to numeric load reduction performance criteria in Provisions C.11.c and C.12.a and c are impermissibly vague and ambiguous such that they may be misinterpreted by some to contain numeric water quality based effluent limitations ("NELs") rather than numeric action levels ("NALs") or similar mechanisms. The distinction is of critical importance as NALs will, where quantitative performance criteria cannot be fully addressed, trigger requirements for the co-permitees to report on the circumstances giving rise to that situation and identify additional actions and time schedules acceptable to the Executive Officer to further address them. In contrast, NELs would trigger liability for a permit violation *even if* the inability to achieve them within the timetable required were beyond the capability of the co-permitees and/or subject to being reasonably addressed by the further action plans they submit and are directed by the Executive Officer to implement.

C.11. and C.12. – SCVURPPP Legal #7C – STL

The Water Board must therefore expressly clarify *the type* of numeric requirement it is imposing in C.11.c and C.12.a and c in order to legally adopt the permit under the NPDES regulations and principles of due process of law. *See Connally v. General Constr. Co*. 269 U.S. 385 (1925). Specifically, it needs to revise these subprovisions (and associated aspects of the Fact Sheet) to specify that the quantitative performance criteria they reference *are* NALs (or similar mechanisms), *not* NELs. Indeed, directly enforceable NELs would be inconsistent with the Basin Plan, the State Board's most recent (and consistent) direction on this subject, and U.S. EPA's most recent guidance memorandum on implementing TMDL requirements in municipal stormwater permits.[6]

While all three of these While all three of these legally controlling documents recognize the potential for the eventual use of NELs to address TMDLs, they also recognize that NALs and other alternative requirements must be used where NELs have not yet proven feasible for

[5] While conceptually supportive of green infrastructure implementation and other PCB-specific related control measures, SCVURPPP and its members do not waive their right to contend that the T.O.'s prescription of them as the means of achieving specified load reductions violates Water Code Section 13360; nor do they waive their rights to contend that these are requirements for new programs and/or higher levels of service imposed based on State discretion.

[6] US EPA "Revisions to the November 22, 2002 Memorandum 'Establishing Total maximum Daily Load (TMSL) Waste Load Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs'," November 26, 2014 ("EPA Memo").

stormwater, as the State Board has repeatedly found in recent years.[7] Indeed, the State RWL Order specifically states: "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.[8] The EPA Memo expressly conditions the use of NELs in municipal stormwater permits on feasibility and emphasizes that MS4 permit writers "have significant flexibility" to use "various forms of clear, specific and measurable requirements" as alternatives to NELs where they have not been shown to be feasible. EPA Memo at 4-5.

C.11. and C.12. – SCVURPPP Legal #7D – STL

Beyond this critical definitional issue, Provisions C.11.c and C.12.c also need to be clarified to focus their requirements and associated performance criteria on local government *approvals* of public and private projects relative to them incorporating green infrastructure features that will help reduce mercury and PCB loads. While municipalities can, with great effort and significant resources, reasonably be expected to put into place green infrastructure plans in the initial years of this permit term and may even be expected to apply green infrastructure requirements to *their approvals of* public and private projects expeditiously so that opportunities are not lost, local governments cannot control the number of project applications they receive or fully control the pace of CEQA review, funding approval, or actual construction build-out timetables associated with such projects.

Therefore, because co-permittees lack sufficient control to assure that numerically denominated quotas of mercury and PCB load reductions will be realized in each of the last three years of the permit, as currently stated, these green infrastructure requirements are contrary to the Basin Plan (and this remains the case regardless of whether such quotas are defined on a permitwide, program/countywide, or proportionate co-permittee specific basis).[9]

[7] The State Water Board's expert input on this subject concluded that numeric effluent limitations are not yet feasible for municipal stormwater. 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). The State Water Board has subsequently found that this remains the case even for non-municipal stormwater discharges and, accordingly, it deleted NELs from the Construction Storm Water General Permit Order No. 2009-0009-DWQ and even, more recently, from the Industrial Storm Water General Permit (Order No. 2014-0057-DWQ).

[8] The State RWL Order also repeatedly recognizes that requiring strict compliance with water quality standards, and, hence, TMDL requirements and waste load allocations, is a matter of discretion relative to municipal storm water permits such that, under a California Supreme Court decision favoring the Commission, these requirements would undoubtedly constitute unfunded mandates if so challenged.

[9] As they are not uniformly distributed throughout the Bay Area and are concentrated based on the time period in which development, particularly of industrial facilities, occurred in certain parts of it, the Santa Clara Program and its members do not believe there is a factual basis for, and take particular issue with, the default denomination of potential program/countywide or derivative co-permittee-specific load reductions quotas for PCBs derived on a proportion of the population basis.

C.11. and C.12. – SCVURPPP Legal #7E – STL

Accordingly, in addition to being clarified as to the use of NALs rather than NELs, these T.O. requirements must be revised to *refocus* the achievement of the performance criteria denominated in Tables 11.1 and 12.2 on loading reductions that will *arise from project approvals* issued within the permit term. To the extent the number of projects approved within the final three years of the permit term are not sufficient to give rise to loading reductions fully meeting the performance criteria due to circumstances beyond local government control, the co-permittees should also be allowed to address this in a report and plan submission that will afford them additional time without being in noncompliance for the reasons stated above.[10]

C.11. and C.12. – SCVURPPP Legal #7F – STL

Second, for the numeric performance criteria in Provisions C.11.c and C.12.a and c to stand up as legal, the co-permittees must, *at the time of permit adoption*, be given a defined, certain and reliable means by which their efforts to meet them will be measured. *See Connally, supra.* As currently written, Provisions C.11.b and C.12.b fail to do so because they put off until *after* the adoption of the T.O. a determination about whether the assessment methodologies developed in 2013 will govern these measurements throughout the permit term or, at some point within the next five years, could or will be replaced with a different means to calculate whether the numeric performance criteria are adequately being addressed.

In this regard, the potential post-permit adoption change in determining the measurement system to be used is the equivalent of an illegal ability to move the finish line after the race has begun. While it seems unnecessary given their 2013 submissions, if developing an enhanced assessment methodology during the course of the permit term for application to requirements in *future* permits is still something to which the Water Board decides to ask the co-permittees to devote their limited resources,[11] Provisions C.11.b and C.12.b must otherwise be refined to provide that the 2013 assessment methodologies will be the ones applied to the numeric performance criteria *throughout this permit term* and not just on an interim basis.

C.11. and C.12. – SCVURPPP Legal #7G – STL

Finally, as noted under Legal Comment No. 2 above, Provision C.12.f appears to be a requirement for a new state-imposed program concerning the regulation of construction demolition on properties often lying outside of the jurisdiction of the federal Clean Water Act. As such, it subject to the unfunded mandates initiative and requires an analysis of technical feasibility and economic reasonableness pursuant to the Water Code as well as the

[10] These revised approaches are especially justified in circumstances like this where the TMDL implementation plans in question have many more years to run and adaptive management and adjustments in final waste load allocations and their timetables are likely in the interim.

[11] Of course, asking the co-permittees to do such would constitute a new requirement imposed at the discretion

of the state.

need for potential analysis under CEQA. In these regards, local governments do not have the resources or fee authority to fund such a requirement and the framework it contemplates much more sensibly should be developed at a state or federal level given that, like the case with asbestos and lead paint, the issue of PCBs in historic building materials is national or at least statewide in scope and its widespread environmental and human health risk implications.

C.15. – SCVURPPP Legal #8 – STL

LEGAL COMMENT No. 8 (Provision C.15 Potables Coverage Issue): Provision C.15.b needs to be revised to restore coverage of non-emergency planned and unplanned potable water (drinking water) system discharges. There is no evidence in the record or otherwise available that the Santa Clara Program's existing conditionally exempt non-emergency planned and unplanned potables discharge program has not been effective or that, to continue to protect water quality, the relevant co-permittees instead require regulation in an alternative manner through State Water Board Order WQ 2014-0194-DWQ ("State Potables Permit"). There is also no evidence from the proceedings that governed the adoption of the original MRP to support the contention in the Fact Sheet that the current non-emergency planned and unplanned potable discharges requirements were ever intended to be interim or temporary in the first instance, as was also suggested in the staff presentation on this issue at the June 10, 2015 hearing on the T.O.[12]

Indeed, the State Potables Permit was specifically amended prior to its adoption to provide that drinking water system discharges which are or can be addressed through a municipal stormwater permit issued by a Regional Water Board will be regulated in that manner so as to avoid a situation where a municipality has to obtain separate coverage under two permits and pay two separate permit fees or be on two separate reporting cycles. State Potables Permit at I.A.3, Attachment B2, Attachment F.I.B, Attachment F, Response to Comments Submitted on 8/19/2014 on Drinking Water System Discharges. The State Water Board specifically directed all Regional Water Boards to continue to specify potable discharge requirements in municipal stormwater permits and, on a going-forward basis, it left it up to them as to how best to craft such requirements. Response to Comments Submitted on 8/19/2014 on Drinking Water System Discharges.

Hence, this Water Board should either restore Provisions C.15.b.iii (1) and (2) from the current MRP or craft new subprovisions specifying alternative substantive requirements for MRP co-permittees responsible for planned and unplanned potable discharges. Indeed, this Water Board has a wide array of options in the latter regard it wishes to streamline its prior approach – given their lack of water quality impact, such discharges could, for example, simply be designated as unconditionally exempt categories under Provision C.15.a. (US EPA's municipal stormwater permits allow non-stormwater discharges of this nature to be covered as unconditionally exempt absent an affirmative and specific showing in the record that they have

[12] Removing coverage for non-emergency potable discharges from Provision C.15.b and effectively demanding that water purveyor co-permittees instead devote additional resources to revise the compliance programs and

reporting structures they have established under the current MRP and pay fees for and obtain a second NPDES permit also represents a state mandate for a new program or higher level of local government service.

proven to be sources of pollutants at levels that affect receiving water quality; the State Water Board's General Permit for stormwater discharges from industrial activities also takes this approach. State Board Order 2014-0057-DWQ at IV.A.2.)

Alternatively, if consistency with the State Potables Permit is the paramount concern, then the Water Board could easily create a new short subprovision for planned and unplanned emergency discharges within Provision C.15.b that would summarily specify that "Potable water discharges that meet the Discharge Specifications set forth in Section IV.A or the Multiple Uses or Beneficial Reuse terms set forth in Section VI of the Statewide General NPDES Permit for Drinking Water Systems Discharges, Order WQ 2014-0194-DWQ shall be deemed to be conditionally exempt provided that the Permittees maintain records of these discharges, BMPs implemented, and any monitoring data collected." However, what is not needed or justified and is contrary to the State Board's intent and expressed direction on this issue is the current approach of not addressing these non-emergency planned and unplanned potable water discharges within Provision C.15 at all.

* * * * *

Thank you for the opportunity to submit these comments on behalf of the Santa Clara Program and its co-permittees. We look forward to continuing to work with the Water Board staff with respect to trying to cooperatively resolve the concerns we have raised so that future legal challenges can be avoided.

Sincerely yours,

Robert L. Falk

cc via email:
Bruce Wolfe
Tom Mumley
Santa Clara Program Management Committee
Adam Olivieri

SAN MATEO COUNTYWIDE
Water Pollution Prevention Program
Clean Water. Healthy Community.

July 10, 2015

Mr. Bruce Wolfe
Executive Officer
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

Subject: SMCWPPP Comments on the Tentative Order for the Reissued NPDES Stormwater Municipal Regional Permit

Dear Mr. Wolfe:

The San Mateo Countywide Clean Water Program (SMCWPPP) appreciates this opportunity to comment on the Tentative Order for the reissued NPDES stormwater municipal regional permit ("MRP 2.0") that was recently released by the San Francisco Bay Regional Water Quality Control Board (Regional Water Board) staff. Our comments reflect the importance of developing permit requirements that are flexible, practical, and cost- effective while meeting the challenges of continuing to protect water quality in our local creeks and San Francisco Bay.

General-SMCWPPP-#0-DCB

Please note that SMCWPPP's highest priority areas of concern are Provisions C.3 (New Development and Redevelopment, especially the Green Infrastructure provision), C.10 (Trash Load Reduction), and C.11/12 (Mercury and PCBs Controls).

General-SMCWPPP-#1-DCB

Of particular concern is that Provision C.12 (PCBs Controls) continues to fall well short of providing Permittees with a clear and feasible pathway to attaining compliance.

General-SMCWPPP-#2-DCB

At the July 8, 2015 Regional Water Board hearing, Board members acknowledged that given the very high costs and difficulties to address PCBs, trash controls should be given priority during the permit term. This is also consistent with the message from the State Water Resources Control Board via the recently adopted trash amendments. Based on this direction from Regional Water Board members, requirements currently included in the PCB provision should be streamlined and the schedule for implementation of controls extended to provide additional time to allow Permittees to focus on trash controls during this permit term.

General-SMCWPPP-#3-DCB

Regional Water Board members also noted that the general approach in the permit is to require implementation of BMPs and pollutant controls, and that the requirements in the permit should be

predictable and provide a clear/concise articulation of the path to compliance. These factors are particularly relevant to crafting the PCBs-related requirements.

General-SMCWPPP-#4-DCB

We therefore request that the Tentative Order be revised so that the load reduction performance criteria are not the point of compliance and compliance be based upon implementing PCBs control programs designed to achieve a load reduction target (such as a Numeric Action Level or similar mechanism for triggering requirements for additional action and reporting), so that Permittees are not vulnerable to potentially very costly third-party law suits.

General-SMCWPPP-#5-DCB

To help provide Permittees with a clear and feasible path to compliance, an interim accounting method should be included in its entirety in the permit and applicable for at least the term of the permit.

General-SMCWPPP-#6-DCB

Additionally, implementation schedules should be expanded to allow Permittees to focus on higher priority water quality controls per the Regional Water Board's comments at the July 2015 hearing.

For each issue in the Tentative Order that we have identified, a corresponding recommended revision to the Tentative Order is presented below, organized by each provision for which we are providing comments.

C.3 - NEW DEVELOPMENT AND REDEVELOPMENT

C.3.b.i - Regulated Projects-SMCWPPP-#7-DCB

We appreciate that the Regulated Project thresholds, land use types, and exemptions for C.3 coverage did not change from the current permit. However, new language in Provision C.3.b requires that any Regulated Project that was approved before any C.3 requirements were in effect (i.e., does not have a stormwater control plan) and has not begun construction before MRP 2.0 takes effect must comply with provisions C.3.c and C.3.d (LID treatment and sizing requirements).

- **Issue**: Permittees do not have the legal authority to impose new requirements on projects with approved entitlements or development agreements, and therefore will face non-compliance with this requirement. If a Permittee did try to impose new requirements on such projects, it could face legal battles with the property owner or developers.

  Requested Revision: Delete this requirement.

C.3.c.i.(2)- LID Site Design-SMCWPPP-#8-DCB

Permittees are required to collectively develop and adopt design specifications for pervious pavement systems, subject to Executive Officer approval. Countywide program guidance manuals already include pervious pavement specifications.

- **Issue:** This requirement duplicates work that already exists[1] and has been and continues to be implemented by Permittees. There has been no indication that existing specifications are insufficient or ineffective. In addition, the requirement places an undue new level of work on the Permittees, and a potential new level of uncertainty because the specifications are subject to

approval by the Executive Officer, without any factual basis in the fact sheet to support the increased effort.

Requested Revision: Delete the requirement.

C.3.c.i.(2)(c) - LID Stormwater Treatment-SMCWPPP-#9-DCB

We appreciate the removal of the requirement to demonstrate the infeasibility of rainwater harvesting and use, infiltration, and evapotranspiration before allowing use of biotreatment, based on the experience, analyses, and recommendations of the Permittees, as described in the Fact Sheet.

C.3.e.ii - Special Projects-SMCWPPP-#10-DCB

The Special Projects criteria for LID treatment reduction credits include criteria for density expressed as Floor Area Ratio (FAR)[2] or Dwelling Units (DU) per acre. Both criteria are computed based on the size of the

[1] The SMCWPPP C.3 Technical Guidance (2014) already contains detailed design guidelines and specifications for pervious pavement and grid pavement systems in Chapter 6, Sections 6.6 and 6.7 (see http://flowstobay.org/newdevelopment)

[2] Floor area ratio is defined as the ratio of the total floor area on all floors of all buildings at a project site (except structures, floors, or floor areas dedicated to parking) to the total project area.

project site. The current permit allows jurisdictions to define FAR and calculate DU/acre consistent with their standard practices. MRP 2.0 prescribes specific definitions for each and requires that they be computed based on the total area of the site (e.g., DU/ac based on gross density[3]). The Permittees requested changes to the definitions as part of early input on the Administrative Draft and the changes were not incorporated.

- **Issue:** Permittees typically use a definition of gross density that excludes public rights-of-way. Using gross density as defined in the Tentative Order will result in a lower density value that may prevent some valuable high density projects from qualifying for LID treatment reduction credits. Similarly, Permittees would like to exclude public rights-of-way and public plaza areas from the computation of FAR.

  Requested Revision: Change the definitions of FAR and gross density to exclude public plazas, public rights-of-way, and civic areas.

C.3.g.iv - Hydromodification Management (HM) Standard – Methodology for Direct Simulation of Erosion Potential-SMCWPPP-#11-DCB

The Tentative Order contains similar HM standards and requirements for Permittees to those in the current permit. In addition, the Tentative Order allows the Permittees to collectively propose a method for sizing of HM facilities based on direct simulation of erosion potential, which may allow more efficient facility sizing.

- **Issue:** The method must be submitted to the Regional Water Board for review and adopted as a permit amendment before it can be applied. This administrative hurdle is unnecessary, as the method is consistent with the current HM standard (and it is the only requirement in the Tentative Order requiring an amendment), and will cause delay and uncertainty as to when the methodology can be used. Also, the provision contains several typos.

  Requested Revision: Allow Executive Officer approval of the sizing methodology. Correct the following typos:

  - C.3.g.i – Move items (1) through (3) to after the first paragraph in which they are referenced.

- C.3.g.ii.(3) – change "charges" to "charts" in the first sentence.
- C.3.g.vii.(5) – delete the last bullet that refers to the Impracticability Provision, which is not included in the Tentative Order.

C.3.h - Operation and Maintenance of Stormwater Treatment Systems-SMCWPPP-#12-DCB

- **Issue:** C.3.h.ii.(7) contains requirements for O&M Enforcement Response Plans. Section (c) requires that corrective actions for identified O&M problems with pervious pavement, treatment, and HM systems be implemented within 30 days of identification, and if more than 30 days are required, a rationale must be recorded in the Permittee's inspection tracking database. The process of contacting and educating the property owner, allowing the property owner to arrange for

[3] Gross density is defined as the total number of residential units divided by the acreage of the entire site area, including land occupied by public rights-of-way, recreational, civic, commercial, and other non-residential uses.

maintenance work to be completed, and following up with a re-inspection typically takes more than 30 days. In the Phase I Manager's early input on the Administrative Draft, a correction period of 90 days was requested, consistent with current practice by some Permittees and some existing maintenance agreements.

Requested Revision: Allow 90 days for completion of permanent corrective actions.

C.3.h - Operation and Maintenance of Stormwater Treatment Systems-SMCWPPP-#13-DCB

- **Issue:** Changes were made to allow Permittee to track inspections by the number of sites instead of numbers of treatment/HM facilities, which was an improvement, but inspection of at least 20% of the total number of Regulated Projects is required each year. Permittees have requested more flexibility around that number while still meeting the requirement of inspection of each site at least once every five years.

  Requested Revision: Change language to require inspection of "approximately 20%" of sites per year. Also, correct the following typos:

  - C.3.h.ii.(7) – begin first sentence with "Permittees shall prepare and maintain…"
  - C.3.h.v.(4) – Change "XX" Annual Report to "2017" Annual Report.

C.3.j - Green Infrastructure Planning and Implementation-SMCWPPP-#14-DCB

This provision will be one of the most challenging portions of C.3 to implement and has a significant level of uncertainty in terms of what will constitute compliance. It also appears that the level of effort and resources required to implement Provision C.3 will be significantly greater than implementing MRP 1.0 due to the new Green Infrastructure (GI) requirements.

Provision C.3.j.i requires each Permittee to develop a GI Plan. The GI Plan must include: mechanism to prioritize and map potential GI project areas; maps and lists generated by this mechanism, for implementation within 2, 7, and 12 years of the Permit effective date; targets for amounts of retrofitted impervious surface within 2, 7, 12, 27, and 52 years; tracking and mapping of installed GI systems; streetscape design and construction details and standards; a list of updates and modifications to existing related Permittee planning documents; and reporting on all of the above elements. Permittees must also

prepare and submit annually a list of planned and potential GI projects, based on a review of capital improvement projects, and a summary of how each project will include GI to the Maximum Extent Practicable (MEP) or why it was impracticable to implement GI.

- **Issue:** The language in Provision C.3.j needs to be more consistent with the expectations in Provisions C.11 and C.12 for achieving PCB and mercury load reductions with GI. Discussions with Regional Water Board staff on C.11 and C.12 have suggested that load reductions required by GI over the MRP 2.0 permit term can be accomplished by private development and redevelopment, whereas C.3.j only refers to public retrofits.

  Requested Revision: Make more explicit in C.3.j (as well as in C.11/12) that private development and redevelopment as well as public projects will count toward meeting PCB and mercury load reductions, and that constructed public GI projects within the permit term are not required for compliance with GI pollutant load reductions.

C.3.j - Green Infrastructure Planning and Implementation-SMCWPPP-#15-DCB

- **Issue:** Developing a comprehensive GI Plan will take time and significant resources, and the timeframes in the Tentative Order for completion of the Plan are unrealistic. For example, the framework for the GI Plan has to be developed and approved by local governing bodies or city/county managers within one year of the Permit effective date. This is a very short timeframe given the effort required to coordinate and educate internal departments, educate upper level staff and elected officials, prepare the framework, conduct resource planning, and accommodate lead times for bringing the framework to governing bodies. Additionally, the GI Plan must be completed and submitted with the 2019 Annual Report (three and one-half years from the expected Permit effective date). Completing a GI Plan will be a complex and time-intensive process that will require a great deal of municipal interdepartmental coordination and resources. Prioritization and mapping of potential and planned projects may not be able to be completed within two years of the Permit effective date.

  Requested Revision: Provide additional time to complete and obtain governing body approval of the GI framework; e.g. extend the deadline to the required reporting date of September 15, 2017. Provide the entire permit term to complete the GI Plan. Eliminate the two-year deadline to complete prioritization, mapping, and begin implementation of planned/potential projects (before the GI Plan is completed), and include these efforts in the GI Plan development period.

C.3.j - Green Infrastructure Planning and Implementation-SMCWPPP-#16-DCB

- **Issue:** Prioritization and mapping of potential and planned projects will be a major, resource-intensive effort, especially for those smaller jurisdictions that do not have GIS data layers already available. Additional flexibility in approaches to mapping and prioritization is needed. In addition, the time intervals for planning should be aligned with fiscal years, and made consistent with the time intervals for load reductions in C.11/12.

  Requested Revision: The mechanisms used to develop the GI Plan and priorities should include other less complex tools in addition to the GreenPlan-IT tool. The time intervals should be changed to FY 19-20, FY 24-25, and FY 29-30 (to align with C.11/12 load reduction reporting intervals of 2020 and 2030).

C.3.j.i.(1)(c) - Green Infrastructure Planning and Implementation-SMCWPPP-#17-DCB

- **Issue:** Provision C.3.j.i(1)(c) requires Green Infrastructure Plans to include "targets for the amount of impervious surface within the Permittee's jurisdiction to be retrofitted" within 2, 7, 12, 27, and 52 years of the Permit effective date. It is unclear how these "targets" are to be established by each Permittee. In addition, the timeframes for establishing "targets" (we would prefer the term "projections") for the amount of impervious surface retrofitted do not line up with the C.11/12 load reduction timeframes, making it difficult to calculate projected load reductions.

  Requested Revision: Allow the development of "projections" instead of "targets", and allow Permittees to include projected private development as well as public projects. Allow projections to be developed for the years 2020, 2030, 2040, and 2065, consistent with C.11/12 and with other municipal planning documents.

C.3.j.ii. - Green Infrastructure Planning and Implementation-SMCWPPP-#18-DCB

- **Issue:** Provision C.3.j.ii requires early implementation of GI, focused on identifying and implementing public projects that have potential for GI measures (including LID treatment) within the permit term. It is unclear how compliance with this section will be determined. The process for review of planned capital projects needs to be more defined and objective, in order to avoid disagreements with Regional Water Board staff as to what are "missed opportunities". There also needs to be the recognition that while it may be technically feasible to add LID features to a capital project, the funding for the additional features and the ongoing maintenance of the LID features may not be available. Implementation (i.e., design and construction) during the Permit term of GI projects that are not already planned and funded will be very challenging for most Permittees.

  Requested Revision: Efforts during the MRP 2.0 term should focus on development of long-term GI Plans and opportunistic implementation of GI projects where feasible and where funding is available. Add language proposed by the Permittees as early input to the Administrative Draft Permit (as shown in the footnote below[4]) that would allow for consistent review of capital projects for GI opportunities, based on specified criteria. Allow the development of these criteria to take place within the first seven months of the Permit effective date, and set the implementation date to begin review of capital projects as July 1, 2016 (beginning of the fiscal year), with the submittal of the first list of projects with the 2017 Annual Report.

C.4 - INDUSTRIAL AND COMMERCIAL SITE CONTROLS

C.4.c - Enforcement Response Plans (ERPs) -SMCWPPP-#19-DCB

- **Issue:** Provision C.4.c.ii.(3)- Timely Correction of Potential and Actual Non-stormwater Discharges states that "Permittees shall require" correction for all potential and actual discharges before the next rain event but no longer than 10 business days. The current permit requires that all violations are corrected in a timely manner with the "goal" for correcting violations before the next rain event but no longer than 10 business days, and if greater than 10 business days is required, the inspector must record rationale in database or tabular system. Adding the language "Permittees shall require" does not allow for flexibility needed by inspector issuing an enforcement action. If adopted as written, this provision would require sites with minor issues during the dry season (i.e., verbal warnings) to have a follow-up inspection within 10 business days to confirm corrective actions have been implemented. This has the potential to greatly increase the work load for inspectors with no water quality benefit.

  Requested Revision: We request that the requirement as worded in the current permit be maintained in the Tentative Order. In addition, in provision C.4.c.ii (Implementation Level) there is a

requirement for a description of the Permittee's procedures for confirmation of implementation of corrective actions. Given the burdensome requirement for all potential discharges to be corrected within 10 business days during dry weather, we request the Fact Sheet include text to clarify the flexibility that confirmation of corrective actions is not limited to a follow-up inspection but may occur during the initial inspection, or be a photo submittal or documentation from the facility.

[4] Proposed language: "Permittees shall review and analyze appropriate projects within the Permittee's capital improvement program, and for each project, assess the opportunities and associated costs of incorporating LID into the project. The analysis shall consider factors such as grading and drainage, pollutant loading associated with adjacent land uses, uses of available space with the project area, condition of existing infrastructure, opportunities to achieve multiple benefits such as providing aesthetic and recreational resources, and potential availability of incremental funding to support LID elements along with other relevant factors… Permittees will collectively evaluate and develop guidance on the criteria for determining practicability of incorporating green infrastructure measures into planned projects."

C.5 - ILLICIT DISCHARGE DETECTION AND ELIMINATION C.5.a – Legal Authority-SMCWPPP-#20-DCB

- **Issue:** New text was added to Provision C.5.a Legal Authority that requires Permittees to have adequate legal authority to address illicit discharges including sewage. The new text provides an exception for those sewage-related discharges that "already reported to the Regional Water Board through the California Integrated Water Quality System Project." We appreciate the attempt to exempt those illicit discharges reported to the Regional Water Board consistent with requirements outside of the MRP; however, this exemption is misplaced and should be associated with the tracking and reporting of these discharges via the MRP, not having the legal authority to address these discharges.

  Requested Revision: We request that the text "already reported to the Water Board through the California Integrated Water Quality System Project" be moved from provision C.5.a (Legal Authority) to the more appropriate provision C.5.d (Tracking and Case Follow-up). Permittees should maintain the legal authority to address all sewage illicit discharges, but would like to exclude the requirement for tracking sanitary sewer overflows via their water quality spill and dumping complaint tracking and follow-up electronic database/tabular system required by the MRP if the data are already being reported through CIWQS. To address this issue, we recommend the following underlined text be added to the following provision:

  > **C.5.d.i Task Description** – All incidents or discharges reported to the spill and dumping central contact point that might pose a threat to water quality shall be logged to track follow-up and response through problem resolution. The data collected shall be sufficient to demonstrate escalating responses for repeated problems and inter/intra-agency coordination, where appropriate. If data are tracked and reported to the Water Board under another permit (e.g., SSOs reported according to State Board Order No. 2006-0003-DWQ) it is not necessary to track and report the incident according to this provision.

C.5.b – Enforcement Response Plans (ERPs) -SMCWPPP-#21-DCB

- **Issue:** Provision C.5.b.ii.(3) - Timely Correction of Potential and Actual Non-stormwater Discharges - states that "Permittees shall require correction of all potential and actual discharges before the

next rain event but no longer than 10 business days. The current permit requires that all violations are corrected in a timely manner with the "goal" for correcting violations before the next rain event but no longer than 10 business days, and if greater than 10 business days is required, the inspector must record rationale in database or tabular system. Adding the language "Permittees shall require" does not allow for flexibility needed by inspector issuing an enforcement action. If adopted as written, this provision would require sites with minor issues during the dry season (i.e., verbal warnings) to have a follow-up inspection within 10 business days to confirm corrective actions have been implemented. This has the potential to greatly increase the work load for inspectors with no water quality benefit.

Requested Revision: We request that the requirement as worded in the current permit be maintained in the Tentative Order. In addition, in provision C.5.b.ii - Implementation Level there is a requirement for a description of the Permittee's procedures for confirmation of implementation of corrective actions. Given the burdensome requirement for all potential discharges to be corrected within 10 business days during dry weather, we request the Fact Sheet include text to clarify the flexibility that confirmation of corrective actions is not limited to a follow-up inspection but may occur during the initial inspection, or be a photo submittal or documentation from the facility.

C.5.e – Control of Mobile Sources-SMCWPPP-#22-DCB

- **Issue:** The Control of Mobile Sources provision has new, onerous reporting requirements that are duplicative of reporting required in other provisions, including reporting on local, county-wide and regional outreach efforts (reported in Provision C.7) throughout the permit term, number of inspections conducted (reported in Provision C.4 or C.5), and number and type of enforcement actions taken (reported in Provision C.4 or C.5). Specifically, provision C.5.e.iii.(1)(f) specifically requests a list of mobile cleaners operating within the Permittee's jurisdiction.

  Requested Revision: We request that the mobile business lists referred to in C.5.e.ii.(1)(c) and C.5.e.iii.(2)(f) refer specifically to "mobile cleaners" for consistency. We also request that the reporting requirements C.5.e.iii.(1)(f) and C.5.e.iii.(2)(f) refer to "inventories" to be consistent with the implementation level requirements. Additionally, delete the reporting requirements in Provision C.5.e.iii related to inspections, enforcement and outreach that are reported in other Annual Report sections. We also recommend the following revisions shown in underline/strikeout to provide consistency with the development and reporting of a business inventory:

  - C.5.e.ii.(1)(c) Regularly updating mobile cleaner business inventories
  - C.5.e.iii.(1)(f) ~~a list of mobile cleaners operating within the Permittee's jurisdiction~~; Permittee's inventory of mobile cleaner businesses
  - C.5.e.iii.(2)(f) ~~a list of mobile businesses operating within the Permittee's jurisdiction~~; Permittee's inventory of mobile cleaner businesses

C.6 - CONSTRUCTION SITE CONTROL

C.6.b– Enforcement Response Plans (ERPs) -SMCWPPP-#23-DCB

- **Issue:** Provision C.6.b.ii.(3)- Timely Correction of Potential and Actual Non-stormwater Discharges states that "Permittees shall require" correction for all potential and actual discharges before the next rain event but no longer than 10 business days. The current permit requires that all violations are corrected in a timely manner with the "goal" for correcting violations before the next rain event but no longer than 10 business days, and if greater than 10 business days is required, the inspector must record rationale in database or tabular system. Adding the language "Permittees shall require" does not allow for flexibility needed by inspector issuing an enforcement action. If adopted as

written, this provision would require sites with minor issues during the dry season (i.e., verbal warnings) to have a follow-up inspection within 10 business days to confirm corrective actions have been implemented. This has the potential to greatly increase the work load for inspectors with no water quality benefit.

Requested Revision: We request that the requirement as worded in the current permit be maintained in the Tentative Order. In addition, in provision C.6.b.ii (Implementation Level) there is a requirement for a description of the Permittee's procedures for confirmation of implementation of corrective actions. Given the burdensome requirement for all potential discharges to be corrected within 10 business days during dry weather, we request the Fact Sheet include text to clarify the flexibility that confirmation of corrective actions is not limited to a follow-up inspection but may occur during the initial inspection, or be a photo submittal or documentation from the facility.

C.6.d – Plan Approval Process-SMCWPPP-#24-DCB

- **Issue:** Provision C.6.d (Plan Approval Process) requires verification that the developer/operator has "obtained coverage" under the Construction General Permit for sites disturbing one acre or more of land. Determination of whether a developer/operator has "obtained coverage" under the General Permit is the responsibility of the Regional Water Board, not Permittees. The current permit language requires verification the developer has "filed a Notice of Intent."

  Requested Revision: We request that the requirement in the current permit for Permittees to verify that the developer/operator has "filed a Notice of Intent" be maintained in Tentative Order.

C.6.e.iii.(2)(g) - Reporting-SMCWPPP-#25-DCB

- **Issue**: The text refers to the "number of violations" fully corrected as the number of enforcement actions, which is inconsistent with similar reporting requirements in provision C.4.

  Requested Revision: For consistency, we request that the text in C.6.e.iii.(2)(g) be revised to refer to the number of "enforcement actions fully corrected" instead of the number of "violations fully corrected."

C.6.e.ii(2)(b) – Inspection of Hillside Projects-SMCWPPP-#26-DCB

- **Issue**: Provision C.6.e.ii.(2)(b) requires that monthly wet season inspections be conducted at hillside projects (defined by Permittee maps or > 15% slope) that disturb 5,000 sq ft or more of soil. This threshold is arbitrary and has no linkage to whether the project is a significant threat to water quality, which is the current criterion for inspection sites that disturb less than 1 acre of soil. In addition, this requirement to change inspection frequency criteria has no implementation date, so it is assumed to take effect on the effective date of the permit (i.e., December 1, 2015) in the middle of the wet season, which will be problematic for Permittees to implement.

  Requested Revision: Phase I stormwater program managers provided early input to the Administrative Draft that included recommended language that would limit inspections of hillside projects "meeting a minimum size threshold for disturbed land as defined by the Permittee." We request that Regional Water Board staff incorporate this recommended language into the reissued permit. Also, we request that the implementation date for monthly inspections in this new category begins July 1, 2016. The number of sites and inspections for this new category for the entire wet season and the criteria used to determine the new category could be reported in the 2017 Annual Report. Additionally, we request that the following revisions are made to the provision:

  - C.6.e.ii.(2) {add at the end} Effective Date – Immediate, except July 1, 2016 for category (2)(b) hillside projects.

- C.6.e.iii.(1) In the 2017 Annual Report, each Permittee shall certify the criteria it uses to determine hillside developments. If the Permittee is using maps of hillside developments areas or other written criteria, include a copy in the Annual Report.
- C.6.e.iii.(2)(a) Total number of active hillside sites disturbing less than one acre of soil requiring inspection, beginning in the 2017 Annual Report;

C.7 – PUBLIC INFORMATION AND OUTREACH

General Comments regarding Provision C.7. -SMCWPPP-#27-DCB

- **Issue:** Provision C.7 should provide Permittees with flexibility to craft local or countywide public outreach programs that are tailored to local needs (e.g., outreach directed towards any funding initiative activity planned locally during the MRP 2.0 permit term).

  Recommended Revision: Include language stating that Permittees may comply with the requirements of Provision C.7 through development of a comparable education and outreach plan that addresses the overall objectives of the Provision.

General Comments regarding Provision C.7. -SMCWPPP-#28-DCB

- **Issue:** C.7 is the primary provision for public outreach in the permit, but public outreach tasks are disbursed throughout the Tentative Order, including within Provisions C.3, C.5, C.9, and C.15. For example, Provision C.5.c. (Spill and Dumping Complaint Response Program) includes requirements related to maintaining a point of contact and Provision C.9.e is concerned with public outreach in relation to pesticides controls.

  Recommended Revision: Relocate all public outreach-related tasks to Provision C.7, thereby creating one comprehensive public outreach provision. The provisions that currently include outreach tasks should instead refer to Provision C.7. This approach would be beneficial to Permittees and countywide programs for both identifying outreach tasks and compliance reporting.

C.7.c. Media - Use of Free Media-SMCWPPP-#29-DCB

- **Issue:** Providing additional flexibility would improve the effectiveness of the use of free media.

  Recommended Revision: Provide an alternative to the proposed six pitches by allowing four pitches coupled with ongoing social media postings. We also recommend noting under reporting (C.7.c.iii) that the success of social media may be documented with available metrics, such as number of likes and shares.

C.7.e: Public Outreach and Citizen Involvement Events-SMCWPPP-#30-DCB

- **Issue:** Provision C.7.e combines outreach and citizen involvement events and would increase the amount of events that most municipalities would have to conduct at a time when local budgets and staff availability for outreach activities are already currently stretched.

  Recommended Revision: Rename this provision "Public Outreach and Engagement Activities." Eliminate Table 7.1 and the associated requirements that each city conduct a certain number of

events based on population. Instead specify a framework that emphasizes engagement activities to be implemented at the discretion of each municipality based on a menu that includes tabling events, social media campaigns, presentations, workshops, cleanups, community based social marketing, collaboration with watershed stewardship groups, new printed promotional materials, and advertising. Require each municipality to select and implement a minimum of three activities from the menu, and establish accountability through the reporting section, where each municipality would justify why it chose the selected activities and document the effectiveness of its choices. Include language that would allow municipalities to team up on activities at their discretion. This would give municipalities more freedom to tailor outreach activities to their community needs and budgets. However, if the current prescribed approach remains, we recommend at a minimum cutting the number of events by at least one across the board.

C.7.f. Watershed Stewardship Collaborative Efforts-SMCWPPP-#31-DCB

- **Issue:** Additional flexibility regarding public outreach and engagement activities would allow municipalities to better tailor these activities to local needs.

  Recommended Revision: Eliminate C.7.f as a separate provision and include watershed stewardship collaborative efforts as an option under Provision C.7.e, as described above.

C.8 - WATER QUALITY MONITORING

C.8.d.i (Biological Assessment) and C.8.d.i (Chlorine) -SMCWPPP-#32-DCB

- **Issue:** There are two subsections designated C.8.d.**i**.

  Requested Revision: Renumber C.8.d subsections.

C.8.d.i.(1) - Biological Assessment – Field and Laboratory Method-SMCWPPP-#33-DCB

- **Issue:** Permittees are required to conduct biological assessments using the full characterization of physical habitat (full PHab). Use of full PHAB was not required under MRP 1.0, instead, a limited PHab methodology was required. This is because the information collected under the full PHab method is not useful in random probabilistic-style monitoring designs such as the one implemented by SMCWPPP and coordinated through the Regional Monitoring Coalition (RMC). Full PHab is more useful in targeted monitoring programs where specific sites are selected. Implementation of the full PHab methodology adds approximately 20 minutes onto the field time for each bioassessment station, eliminating most opportunities to sample two sites per day, resulting in increased costs to the sampling program.

  Requested Revision: Restore the modified PHab assessment that is required under the current permit.

C.8.d.ii - Temperature and C.8.d.iii - Continuous Monitoring of Dissolved Oxygen, Temperature, and pH-SMCWPPP-#34-DCB

Permittees are required to continuously monitor streams for temperature from April through September (C.8.d.ii) and for 1 to 2 weeks in the spring and summer (C.8.d.iii). Permittees are required to consider conducting an SSID project when results exceed the given temperature trigger.

- **Issue:** The Maximum Weekly Average Temperature (MWAT) trigger listed in this provision was developed for salmonid streams in the Pacific Northwest where the climate is cooler than the Bay Area. Salmonid species in the Bay Area have adapted to warm temperatures and as appropriate, regulatory/resource agencies (e.g., NMFS) have set temperature targets for certain cold water streams based on the life history needs of specific species. Trigger thresholds included in the Tentative Order are based on false assumptions, inconsistent with existing targets established by the regulatory agencies, and will likely create confusion when applied to water data collected via the MRP.

  Requested Revision: Allow Permittees to determine watershed-specific temperature trigger thresholds consistent with targets established via other regulatory processes (e.g., agreements with NMFS), if applicable, and set reasonable "default" temperature thresholds for those streams where targets have not been established.

C.8.d.iv - Toxicity in Water Column-SMCWPPP-#35-DCB

Permittees are required to collect grab samples of water and conduct toxicity testing using five test organisms and specified methods, and evaluate toxicity using the Test of Significant Toxicity (TST) statistical approach.

- **Issue:** The required water column aquatic toxicity analytical procedure for *Hyalella azteca* (freshwater amphipod) and *Chironomus dilutus* (midge) (i.e., EPA 821-R-02-013) does not include those organisms (except in an appendix) and does not specify the test protocol design, such as the number of replicates, number of organisms, etc.

  Requested Revision: Replace EOA-821-R-02-012 with EPA-600-R-99-064 for *Hyalella azteca* (freshwater amphipod) and *Chironomus dilutus* (midge) which does provide specific protocols. A reference toxicant test method is prescribed for these organisms in water in the EPA-600-R-99-064 manual.

C.8.d.iv - Toxicity in Water Column-SMCWPPP-#36-DCB

- **Issue:** The TST statistical approach has not been adopted by the State Water Resources Control Board (SWRCB) and therefore should not be included in the MRP.

  Requested Revision: Require that the TST approach be implemented following SWRCB **adoption** of the proposed Policy for Toxicity Assessment and Control. Until that time, the MRP 1.0 approach should be used.

C.8.d.v - Toxicity and Pollutants in Sediment-SMCWPPP-#37-DCB

Permittees are required to collect grab samples of bedded sediment and conduct toxicity testing using two test organisms and specified methods, and evaluate toxicity using the Test of Significant Toxicity (TST) statistical approach. Sediment grab samples must also be analyzed for several pollutants. For pollutants without water quality objectives (WQOs), Permittees are required to consider conducting an SSID project when results exceed the Probable Effects Concentrations (PECs) or the Threshold Effects Concentrations (TECs) from MacDonald 2000.

- **Issue:** The TST statistical approach has not been adopted by the SWRCB yet.

Requested Revision: Require that the TST approach be implemented following SWRCB adoption of the proposed Policy for Toxicity Assessment and Control. Until that time, the MRP 1.0 approach should be used.

C.8.d.v - Toxicity and Pollutants in Sediment-SMCWPPP-#38-DCB

- **Issue:** The pollutant list includes high cost, low benefit analytes such as PCBs, mercury, and organochlorine (OC) pesticides, some of which (PCBs and mercury) are being monitored extensively under Provision C.8.f. Data collected under this provision is for the purposes of assessing the quality of local creeks and channels, not the Bay, which is the water body listed on the 303(d) list of water quality impaired segments for these legacy pollutants. Therefore, there is no justification for analyzing bedded creek/channel sediment for these pollutants.

  Requested Revision: Remove PCBs, mercury and OC pesticides from the analyte list in Table 8.2.

C.8.d.v - Toxicity and Pollutants in Sediment-SMCWPPP-#39-DCB

- **Issue:** The TECs for bedded sediments are very conservative values that do not consider site specific background conditions, and are therefore not depictive of water quality concerns in receiving waters in the Bay Area. Including TEC values as triggers for SSID consideration will result in nearly every sample being considered for an SSID project. For example, the predominant TEC values triggered during MRP 1.0 were Chromium and Nickel. Both are found in watersheds throughout San Mateo County due to the presence of naturally occurring serpentinite bedrock.

  Requested Revision: Remove TECs from the list of conditions triggering consideration for conducting a SSID project.

C.8.e.iii.(1).(f) - SSID Projects – Step 1: Toxicity Study Work Plan-SMCWPPP-#40-DCB

Permittees are required to conduct SSID projects in a defined stepwise process. Step 1 requires development of a work plan for each SSID project and defines what elements the work plan should include. For toxicity studies where there is no chemical pollutant associated with the toxicity result this Provision requires that a Toxicity Identification Evaluation (TIE) is conducted.

- **Issue:** Requiring Permittees to conduct TIEs overly constrains the study design and is a departure from MRP 1.0 which also allowed for first conducting the more flexible Toxicity Reduction Evaluation (TRE). A TRE is a site-specific study that relies on "weight of evidence" reasoning to identify the cause of toxicity and may include a TIE if warranted. A TIE identifies the toxic components of the sample through chemical manipulation.

  Requested Revision: Restore the option from MRP 1.0 which allows Permittees to first conduct a TRE for toxicity SSID studies and then conduct a TIE if the TRE does not result in identification of the cause of toxicity.

C.8.e.iii.(3).(b) - SSID Projects – Step 3: Follow up actions-SMCWPPP-#41-DCB

Permittees are required to conduct SSID projects in a defined stepwise process. Step 3 defines the possible follow up actions. If a Permittee determines that that their MS4 is not a source contributing to the exceedance, this Provision requires concurrence in writing by the Executive Officer before the SSID project can be determined to be completed.

- **Issue:** Executive Officer concurrence of SSID project completion may be lengthy and/or result in unnecessary additional investigation with unknown cost and schedule implications.

Requested Revision: Remove the requirement for Executive Officer approval.

C.8.f.ii - Table 8.4 POC Monitoring Parameters, Effort and Type-SMCWPPP-#42-DCB

Permittees are required to conduct POC monitoring consistent with the monitoring intensity and frequency specified in Table 8.4. Table 8.4 lists the total number of samples required over the permit term and on an annual basis for each pollutant of concern.

- **Issue:** Footnote "a" for Table 8.4 states that the Total Samples Collected column applies to the permit term; however, this conflicts with the paragraph preceding Table 8.4 which states that the total shall be collected by the end of the fourth Water Year. It is unclear by what date the total number of samples should be collected.

  Requested Revision: Revise text paragraph preceding Table 8.4 to be consistent with footnote "a."

C.8.f.ii - Table 8.4 POC Monitoring Parameters, Effort and Type-SMCWPPP-#43-DCB

- **Issue:** Column B in the Toxicity row of Table 8.4 states that the Total Samples to be collected is 10; however, Column C states that a minimum of 20 samples is required. It appears that the Column C total is a typo and it is unclear whether 10 or 20 toxicity samples should be collected.

  Requested Revision: Fix the typo in Column C of the toxicity row on Table 8.4 from 20 to 10.

C.8.f.ii - Table 8.4 POC Monitoring Parameters, Effort and Type-SMCWPPP-#44-DCB

- **Issue:** Toxicity sampling of the sediment is required during the wet season but not necessarily during storms. Typically sediment samples are collected during the dry season both to characterize sediment transport that has occurred throughout the year and to coordinate sampling with other dry season parameters. There is no scientific justification for sediment sample collection during the wet season.

  Requested Revision: Delete the required timing of the sediment sample, change it to the dry season, or provide a technical justification for wet season sediment sampling.

C.8.f.ii - Table 8.4 POC Monitoring Parameters, Effort and Type-SMCWPPP-#45-DCB

- **Issue:** The required total samples collected and yearly minimum is the same for each Countywide Program. In recognition of a smaller population, smaller permitted area, and less resources, other Provisions allow a lower level of effort for SMCWPPP, such as C.8.d (Creek Status) which requires a lower number (by half) of minimum samples. Requiring the same number of samples for each Program places a disproportionate burden on SMCWPPP compared to larger Programs.

  Requested Revision: Add a tiered component to C.8.f POC Monitoring by requiring a smaller (by half) minimum number of total samples and yearly minimums for SMCWPPP.

C.8.f.ii - Table 8.4 POC Monitoring Parameters, Effort and Type-SMCWPPP-#46-DCB

- **Issue:** The required total samples collected yearly minimum for copper, pesticides, and nutrients (20/2) is double the required minimum required numbers for toxicity (10/1). The cost of sending

out field crews to collect that additional copper, pesticide, and nutrient samples is high and the benefit of the data is low. There are already programs in place to address copper and pesticide management actions. Furthermore, many nutrient samples will already be collected concurrent with Biological Assessments required by Provision C.8.d (Creek Status). Additional required samples eliminates opportunities to realize cost savings by with coordinating copper, pesticide, and nutrient sampling with toxicity sampling.

Requested Revision: Reduce the sampling effort (Total Samples Collected/yearly minimum) for copper, pesticides, and nutrients to 10/1 to be consistent with the required toxicity sampling effort.

C.8.f.ii - Table 8.4 POC Monitoring Parameters, Effort and Type-SMCWPPP-#47-DCB

- **Issue:** Table 8.4 requires a yearly minimum number of samples for all pollutants. This requirement constrains study design options by eliminating the possibility of conducting intensive one-year studies. This is especially true for pollutants with an already large knowledge base such as copper, pesticides, toxicity, and nutrients. Furthermore, it is unclear whether the yearly minimum still applies if the total samples collected is achieved before the end of the permit term.

  Requested Revision: Eliminate annual requirements for copper, pesticides, toxicity, and nutrients to allow for the option of meeting the minimum Total Samples Collected during intensive watershed studies conducted over one or two years.

C.8.f.ii - Table 8.4 POC Monitoring Parameters, Effort and Type-SMCWPPP-#48-DCB

- **Issue:** Table 8.4 does not address potential changes to POC Monitoring in the event that a statewide coordinated pesticides and pesticides-related toxicity monitoring program begins collecting data during the permit term.

  Requested Revision: Add a footnote to the Pesticides row of Table 8.4 stating that "In the case that a statewide coordinated pesticides and pesticides-related toxicity monitoring program begins collecting data on an ongoing basis during the permit term, Permittees may request the Executive Officer reduce or eliminate this monitoring requirement."

C.8.f.iii - Table 8.5 POC Monitoring Analytical Methods-SMCWPPP-#49-DCB

Permittees are required to analyze the POC samples according to methods listed in Table 8.5. If no methods are listed, Permittees shall use USEPA or SWAMP-approved methods. Table 8.5 specifies analytical methods for PCBs and toxicity.

- **Issue:** The method specified for PCBs in Table 8.5 is USEPA 1668 (RMP 40). Method 1668 is a very high resolution PCB congener method which costs on the order of $800 - $1000 per sample. A total of 80 PCB samples are required by year 4 or 5 of the permit (unclear) which equals a cost burden of about $64,000 to $80,000 for each countywide program. Other PCB congener analytical methods (e.g., Method 8082M) are available at a much lower cost that meet the goals of the monitoring. These lower cost methods have been successfully used during the MRP 1.0 permit term to Identify Source Areas on a larger scale than what could be achieved with the higher cost Method 1668.

  Requested Revision: Remove reference to an analytical method for PCBs.

C.8.g.iv - Reporting – Pollutants of Concern Monitoring Reports-SMCWPPP-#50-DCB

By October 15 of each year Permittees are required to submit a report describing the allocation of sampling effort for POC monitoring for the forthcoming year and what was accomplished for POC monitoring during the preceding water year. The report must also include any data not reportable to California Environmental Data Exchange Network (CEDEN). CEDEN data include data collected in receiving waters; whereas non-CEDEN data are collected outside of receiving waters (e.g., within storm drains, in upland areas).

- **Issue:** A water year ends on September 30; therefore, there are only 15-days available to compile, tabulate, and analyze the data prior to the report deadline of October 15. It would be impossible to provide useful evaluations during such a short time period. Furthermore, the October 15 deadline differs from the March 15 deadline required under MRP 1.0 for POC Monitoring and required under MRP 2.0 for the Urban Creeks Monitoring Report.

  Requested Revision: Revise the timeline for POC monitoring reporting so that it is the same timeline for reporting the POC data and the rest of the C.8 data consistent with C.8.g.iii.

C.8.g.iv - Reporting – Pollutants of Concern Monitoring Reports-SMCWPPP-#51-DCB

- **Issue:** The requirement to report non-CEDEN data by October 15 is out of sync with the reporting of CEDEN data required under Provision C.8.g.ii (Electronic Reporting). This complicates data management.

  Requested Revision: Remove the requirement to report non-CEDEN POC data from Provision C.8.g.iv and revise Provision C.8.g.ii (Electronic Reporting) to include submittal of non-CEDEN data collected pursuant to Provision C.8.f (Pollutants of Concern) to the Water Board by March 15 concurrent with submittal of CEDEN data.

C.9 - PESTICIDES TOXICITY CONTROL

C.9.c - Require Contractors to Implement IPM-SMCWPPP-#52-DCB

- **Issue:** Provision C.9.c.i requires Permittees to hire IPM-certified contractors AND include contract specifications requiring contractors to implement IPM. This requirement as written is duplicative because contract specifications are equivalent to hiring IPM-certified contractors. The current permit requires Permittees to hire IPM-certified contractors OR include contract specifications requiring contractors to implement IPM. This flexibility is important to adequately addressing this provision because there are a very limited number of contractors that are "IPM-certified", but many contractors that conduct IPM.

  Requested Revision: Regional Water Board staff has indicated that this is a typo and that they intended to change the "and" to "or" in the revised TO. We concur and request that the provision be revised to retain the current requirements by changing "and" to "or".

C.9.d - Interface with County Agricultural Commissioners-SMCWPPP-#53-DCB

- **Issue:** Provision C.9.d.i.(c) requires Permittees to report to the Agricultural Commissioner violations of pesticide regulations (e.g., illegal handling and applications of pesticides) associated with stormwater management, particularly the California Department of Pesticide Regulation surface water protection regulations for outdoor, nonagricultural use of pyrethroid pesticides by any person performing pest control for hire (http://www.cdpr.ca.gov/docs/legbills/rulepkgs/11-004/text_final.pdf). Permittees do not inspect pesticide applications by pest control operators and

believe this is outside of their jurisdiction and authority.

Requested Revision: Replace the language in C.9.d.i(c) with the language in Provision C.9.f.i.(3) of the current permit: "report violations of pesticide regulations (e.g., illegal handling) associated with stormwater management."

C.9.e – Public Outreach-SMCWPPP-#54-DCB

- **Issue**: Provision C.9.e.ii.(2) focuses on outreach to residents who use structural pest control operators and contractors on links between pesticide usage and water quality and IPM, but does not include residents who use landscape professionals. Permittees requested the addition of "landscape professionals" to this provision via early input to the Administrative Draft, but the changes were not made.

  Requested Revision: Revise the language to include the following underlined language: "The Permittees shall conduct outreach to residents who use or contract for structural pest control or landscape professionals by (a) explaining the links between pesticide usage and water quality; (b) providing information about IPM in structural pest management certification programs or landscape professional trainings; and (c) disseminating tips for hiring structural pest control operators or landscape professionals, such as the tips prepared by the University of California Extension IPM Program (UC-IPM).

C.10 - TRASH LOAD REDUCTION

C.10.a.i – Trash Reduction Requirement Schedule-SMCWPPP-#55-DCB

- **Issue:** Reductions become increasingly more challenging the closer Permittees move towards the trash reduction goal of "no adverse impacts". Provision C.10.a.i (Schedule) requires a 70% load reduction by 2017. This schedule is too rigorous and should be extended to allow for more time to develop/implement sustainable control measures. Most of the areas remaining to address are moderate trash generating areas and will likely require more innovative controls that will have to be piloted.

  Requested Revision: We request that the 70% load reduction time schedule, set for 2017 in the Tentative Order, be extended at least to 2018.

C.10.a.ii.b – Trash Generation Area Management (Private Drainage Areas) -SMCWPPP-#56-DCB

- **Issue:** Provision C.10.a.ii.b (Trash Generation Area Management) requires Permittees to map and assess ALL private drainages 5,000 ft^2 and greater, determine the level of trash present in these areas, and ensure that no further actions are needed. The intent of mapping these drainages is unclear. Mapping would require a significant undertaking that would result in minimal water quality benefit. Ensuring that private drainages are at a "low" trash generation level does not require mapping. Areas can be identified by modifying existing municipal inspection programs already in place.

  Requested Revision: We request that the mapping requirement be removed from this provision. As an alternative, Permittees should be required to: 1) identify high priority areas that generate moderate, high or very high levels of trash and are plumbed directly to their stormwater drainage systems, and 2) cause these areas to be managed to a level equivalent to the performance of a full capture system or to a low trash generation level.

C.10.a.ii.b – Trash Generation Area Management (Private Drainage Areas) -SMCWPPP-#57-DCB

- **Issue:** Throughout the Bay Area thousands of Green Infrastructure (C.3 compliant) facilities have been constructed on properties over the last 10+ years. These facilities were designed consistent with the new and redevelopment requirements and perform at a level similar to typical trash full capture systems. These systems have been designed to prevent flooding and effectively remove pollutants from stormwater. Provision C.10.a.iii (Mandatory Minimum Full Trash Capture Systems) currently requires Permittees to install a screen (5mm) to the overflow pipes of all Green Infrastructure facilities before these devices can be considered full capture systems. Screening the overflow pipes would be out of the scope of the municipality's authority, as nearly all treatment facilities are privately owned and maintained. Additionally, adding screens to existing facilities would have unknown effects to the performance of these systems and would likely increase maintenance and potentially cause flooding. The Regional Water Board needs to reconcile this issue and take into account statewide efforts (via CASQA) to integrate trash capture with LID treatment. The requirements for the sizing and design of green infrastructure facilities are well established. Requiring modifications to these designs for trash just doesn't make sense. The Regional Water Board established provisions requiring these facilities based on their ability to remove pollutants attached to small particles less 0.1mm in size, but is now requiring modifications for trash items that are at least 20 times greater in size? Trash items ARE effectively removed by these facilities without modification.

  Requested Revision: We request that the Water Board remove the requirement for "screening" all Green Infrastructure treatment facilities to be consistent with provision C.3. The Permit should also deem that these facilities are equivalent to full capture systems.

C.10.b.i.a – Maintenance (of Full Trash Capture Systems) -SMCWPPP-#58-DCB

- **Issue:** Provision C.10.b.i.a (Maintenance of Full Capture Systems) currently requires maintenance of small capture devices based on the level of trash generated in the surrounding area. Maintenance frequencies based on trash generation are inconsistent with the experience and knowledge of Permittees. Maintenance frequencies are site specific and are mostly affected by the amount of vegetative material (typically comprising over 85% of the debris captured by a device) that reaches the device and the size of the inlet vault, not the amount of trash generated in the surrounding area.

  Requested Revision: As an alternative to arbitrary maintenance frequencies, we request that the TO be revised to require Permittees to develop and implement Permittee-specific maintenance programs to achieve/maintain full capture criteria. Permittees would then report on the implementation of their maintenance programs, adaptation of these programs and any issues that need to be addressed. Tailoring maintenance programs to maintenance needs of specific devices is the only way to ensure adequate maintenance of these devices in the future.

C.10.b.iv - Source Controls-SMCWPPP-#59-DCB

The most important actions that can be taken by Permittees are those that eliminate the generation of litter-prone items in perpetuity. Bay Area Permittees have been national leaders on taking actions to eliminate the sale or distribution of litter-prone items. Nearly every Permittee in the Bay Area has adopted an ordinance focused at eliminating certain types of trash in our creeks and the Bay, such as single-use plastic bags and expanded polystyrene foodware. These actions took significant political support, public resources and were done in partnership with environmental NGOs.

- **Issue:** Permittees to-date have focused on instituting a number of different types of source control

actions. Data collected by Permittees indicated that each individual action reduces between 5 and 10% of the trash found in stormwater on average. These reductions are likely not observed by visual assessment protocols because the protocols are only precise enough to detect reductions greater than 25%. Therefore, without a specific reduction value for source controls, reductions associated with these actions may never be valued.

The maximum of 5% reduction for all source control actions is arbitrary and inconsistent with our current knowledge of the percentage of trash in stormwater comprised of specific litter-prone items associated with source control actions. The programs put into place to address these litter prone items are effective and directly impact stormwater quality.

Requested Revision: We request that the TO be revised to increase the maximum reduction value for all source control actions combined to 25%. Supporting evidence would be required to claim reductions associated with source controls.

C.10.b.iv - Receiving Water Observations-SMCWPPP-#60-DCB

- **Issue:** The Tentative Order requires the Permittees to conduct receiving water observations downstream from trash generation areas converted to "low" trash generation and that "the observations be sufficient to determine whether a Permittee's trash control actions have effectively prevented trash from discharging to receiving waters…" By requiring Permittees to focus on areas downstream of control actions, it appears that receiving water observations could be used to judge compliance with reductions associated with municipal stormwater. This is contradictory and confusing, because the process to judge compliance with stormwater reductions is outlined in the Tentative Order as full capture, visual assessments, source control values, and offsets associated with cleanups.

  SCVURPPP Permittees recognize and have interest in developing an ambient monitoring program that would continue to evaluate trash conditions or levels in local creeks and rivers using a cost-effective and practical protocol. This protocol, however, has not yet been developed.

  Requested Revision: We request that the Tentative Order language be revised to state that the purpose of receiving water observations is "…to evaluate the level of trash present in receiving waters over time, and to the extent possible determine whether there are ongoing sources contributing trash at problematic levels. These would include sources outside of the Permittee's jurisdiction (e.g., state and federal facilities) that are causing or contributing to adverse trash impacts in the receiving water(s)." Receiving water data may also assist Permittees in adaptively managing their trash control programs over time for higher levels of efficiency. To this point, we are willing to be a partner with the Water Board and NGOs in developing and pilot-testing a protocol during the permit term to achieve this purpose.

C.10.e.i – Optional Trash Load Reduction Offset Opportunities - Creek and Shoreline Cleanups-SMCWPPP-#61-DCB

Creek and shoreline cleanups are important actions that promote community involvement, create awareness of trash issues, and improve water quality. These actions have water quality value, are supported by the community and environmental NGOs, and should be accounted for accordingly in the load reduction accounting method.

- **Issue:** While SMCWPPP permittees appreciate the inclusion of load reduction benefits associated with creek and shoreline cleanups, the 5% maximum offset for these important actions is too small

and inconsistent with the environmental benefit. Additionally, the arbitrary 10:1 ratio of trash removed to offset value is too large and undervalues the benefits of these actions.

The requirement for a minimum cleanup frequency of twice per year at each specific site creates inflexibility and is too constraining. Some Permittees may choose to cleanup many sites once per year rather than a small number of sites twice per year. What's important is that trash is being removed from creeks and shorelines, not how many times at a specific site.

Requested Revision: We request that the TO be revised to:

- Increase the maximum offset for creek and shoreline cleanups to 10%;
- Reduce the ratio of trash removed to reduction value to 3:1, similar to other types of mitigation programs; and,
- Remove the requirement that a site be cleaned up at least twice per year before claiming an offset.

C.10.e.i – Optional Trash Load Reduction Offset Opportunities – Direct Discharge Trash Controls-SMCWPPP-#62-DCB

This offset is intended to address trash impacts associated with non-stormwater pathways to creeks and rivers such as illegal dumping directly into water bodies. These pathways directly impact water bodies and at some sites serve as the dominant source of trash. Programs that address trash from direct discharges should be accounted for accordingly in the load reduction accounting method.

- **Issue:** While SMCWPPP permittees appreciate the inclusion of load reduction benefits associated with direct dumping, the 10% maximum offset for these important programs is too low and inconsistent with the environmental benefit of these programs. Additionally, the arbitrary 10:1 ratio of trash removed to offset value is too large and under values the benefits of these actions. Lastly, Permittees may identify direct discharges as an important source of trash to receiving waters after 2016 and therefore the 2016 Annual Report should not be the only timeframe when Permittees can submit a plan to address these sources.

  Requested Revision: We request that the TO be revised to:

  - Increase the maximum offset for programs addressing direct discharges to 25%; and,
  - Reduce the ratio of trash removed to reduction value to 3:1, similar to other types of mitigation programs.
  - Allow for submittals of plans to control direct discharges identified after 2016.

C.10.f - Reporting-SMCWPPP-#63-DCB

- **Issue:** Compliance with NPDES permits is determined by the Water Board. Provision C10.f.v.b requires a Permittee to "submit a report of non-compliance" if it cannot demonstrate the attainment of 70% reduction, which therefore assumes that compliance determinations are made by the Permittee.

  Requested Revision: We request that the Water Board revise this provision to require that a Permittee that cannot demonstrate a 70% reduction, "submit a report and updated Long-term Trash

Load Reduction Plan that describes actions to comply with the mandatory deadlines in a timely manner…"

C.11 - MERCURY CONTROLS-SMCWPPP-#64-DCB

Provisions C.11.a – c in the Tentative Order generally parallel C.12.a – c. Therefore, the below comments on those provisions for C.12 (PCBs Controls) also generally apply to C.11 (Mercury Controls).

C.12 - PCBs CONTROLS

PCBs are a highly persistent (i.e., slow to degrade) legacy pollutant that have been in San Francisco Bay for decades and likely will remain in the Bay for decades to come. Over the past 15 years, Bay Area municipalities in collaboration with the Regional Monitoring Program (RMP) have conducted extensive field studies and gained considerable knowledge about the distribution of PCBs in the Bay Area environment. Due to widespread uses and lack of regulation over many decades (i.e., 1930s – 1970s), this pollutant was widely dispersed in soils and sediments throughout the urban landscape draining to the Bay. Similarly, PCBs are widely dispersed within the Bay's sediments.

Bay Area municipalities have also made a great deal of progress over the past 15 years towards understanding the types of control measures that are most cost-effective in reducing PCBs discharges in stormwater. Although this evaluation of controls is ongoing, no controls identified to-date are particularly cost-effective, apart from the 1979 ban by USEPA on PCBs manufacture, import, export, and distribution in commerce in the United States. The ban represented effective "true source control" but came much too late to prevent the widespread distribution of PCBs into the urban landscape and the Bay. With further true source control generally not an option, the current challenges in addressing PCBs are not surprising.

Extensive source property identification programs led by Bay Area municipalities have identified a small number of PCBs "hot spots" in watersheds across the Bay Area. These hot spots are mostly associated with properties that are currently under cleanup orders from the Regional Water Board, EPA, or DTSC, or are currently permitted by these agencies or could be in the future. These sites are generally outside of the control of local agencies.

It may also be possible to reduce PCBs discharges in stormwater over the next few decades by requiring (as the permit does now through provision C.3) stormwater treatment on private properties as they are redeveloped. Retrofitting in public rights-of-way with landscape-based treatment structures (e.g., "Green Streets") is another approach that provides multiple benefits, but is highly resource and time intensive. Planning for a long-term (i.e., decadal) program to retrofit urban areas with Green Infrastructure has been incorporated into the Tentative Order, but implementation will mostly occur during future permit terms and require several decades.

Additionally, there may be opportunities, although this is highly uncertain, to prevent future contamination as buildings containing PCBs that were constructed during the 1950s - 1970s are demolished. However, the rate at which buildings are demolished and redevelopment occurs, and therefore the timeframe for reduction of PCBs associated with these sources and areas, is generally out of the control of local agencies.

C.12 - PCBs CONTROLS-SMCWPPP-#65-DCB

This lack of control over redevelopment and demolition, and the unknowns about the extent and magnitude of additional "hot spots" creates a high level of uncertainty in the level of implementation that cities and counties can commit to during the next five year permit term. In turn, the uncertainty in implementation creates compliance uncertainty when compliance targets in the permit include assumptions regarding the rate of redevelopment and demolition.

Provision C.12 of the Tentative Order uses a framework that is a hybrid of two approaches, requiring: 1) BMP implementation and 2) pollutant load reduction. The required BMPs are Green Infrastructure and managing PCBs-containing materials and wastes during building demolition activities. However, it appears that the primary intent is to require Permittees to demonstrate a total cumulative Bay Area-wide PCBs load reduction of 3 kg/year over the permit term. SMCWPPP's overarching concern is that Provision C.12 continues to fall well short of providing Permittees with a clear and feasible pathway to attaining compliance with this load reduction requirement.

C.12 - PCBs CONTROLS-SMCWPPP-#66-DCB

It is also important to note that the level of effort and associated resources required to implement Provision C.12 as set forth in the Tentative Order is highly uncertain. Much of the cost of implementing PCBs control programs during the current permit term was offset by a grant from USEPA that will end in 2016. The availability of grant or other funding for implementing Provision C.12 of the reissued permit is unknown. As a starting point, making all of the below recommended revisions would result in much greater certainty regarding the level of effort and associated resources that would be required to comply with Provisions C.12, and create a much clearer pathway towards complying with the MRP.

C.12.a – Implement Control Measures to Achieve Load Reductions-SMCWPPP-#67-DCB

The Tentative Order appears to require Permittees to reduce PCBs loads to the Bay by 3 kg/year by the end of the permit term. The approach includes developing an accounting system for Executive Officer approval early in the permit term that would form the basis for the load reductions credited to the various PCBs controls.

- **Issue:** There is a lack of a clear and feasible pathway for Permittees to attain compliance with the load reduction requirements. Most factors that would be key to meeting the criteria are uncertain and many are not within Permittee control (e.g., extent of source properties that will be found, building demolition rates, and redevelopment rates), making achievement of compliance uncertain.

  Requested Revision: Load reduction performance criteria should not be the point of compliance. Compliance should be based upon implementing PCBs control programs designed to achieve a load reduction target (such as a Numeric Action Level or similar mechanism for triggering requirements for additional action and reporting), based on an interim accounting method (see next section). The target would be informed by what the BMP programs could achieve, based on the accounting system, which would be agreed upon by Permittees and the Regional Water Board upfront and incorporated into the permit.

C.12.a – Implement Control Measures to Achieve Load Reductions-SMCWPPP-#68-DCB

- **Issue:** The schedule for the following reporting requirements in Provision C.12.a is unrealistic.
  - Provision C.12.a.iii.(1) - February 1, 2016 report providing "a list of watersheds (or portions therein) where PCBs control measures are currently being implemented and those in which control measures will be implemented (C.12.a.ii.(1)) during the term of this permit as well as the monitoring data and other information used to select the watersheds."
  - Provision C.12.a.iii.(2) - 2016 Annual Report providing "the specific control measures (C.12.a.ii.(2)) that are currently being implemented and those that will be implemented in watersheds identified under C.12.a.iii.(1) and an implementation schedule (C.12.a.ii.(3)) for these control measures. This report shall include: …. [scope, start dates, progress milestones, schedules, roles and responsibilities of Permittees, etc...]….".

  Requested Revision: Extend the deadlines for the above reports to the 2017 Annual Report.

C.12.b. Assess Load Reductions from Stormwater-SMCWPPP-#69-DCB

SMCWPPP, other countywide stormwater programs, and Regional Water Board staff recently worked together to develop an interim accounting method. It was intended to provide a basis for stipulated load reduction benefits for implementation of the primary PCBs control programs that Permittees anticipate implementing during the MRP 2.0 permit term (this interim accounting method would be revised before the next permit term). SMCWPPP appreciates that Regional Water Board staff included much of the information developed for the interim accounting method in the fact sheet.

- **Issue**: Values for certain key accounting parameters for managing PCBs-containing materials and wastes during building demolition activities were left out.

  Requested Revision: Include in the interim accounting method values for all parameters to allow for scrutiny during the public permit review process, given the uncertainty in these values. It is especially important to include values for all parameters associated with managing PCBs-containing materials and wastes during building demolition activities, including the fraction of PCBs mass in a building that enters the MS4 during demolition in the absence of enhanced controls, which is particularly uncertain. Stormwater programs can also provide similar values for mercury to include in the fact sheet as well.

C.12.b. Assess Load Reductions from Stormwater-SMCWPPP-#70-DCB

- **Issue**: Requirement to formally submit load reduction assessment methodology early in the permit term for Executive Officer approval creates uncertainty in the load reduction benefit for each PCBs control program.

  Requested Revision: Omit the requirement to submit load reduction accounting method early in the permit term. Instead, the interim accounting method should be finalized, incorporated into the permit, and then used to calculate PCBs load reductions during Permittee annual reporting.

C.12.b. Assess Load Reductions from Stormwater-SMCWPPP-#71-DCB

- **Issue**: Water Board staff has acknowledged that load reduction performance criteria are not numeric effluent limits. This should be made clear in the permit. In addition, further clarity is needed regarding the legal definition of the performance criteria and implications with regard to

enforcement and potential third party lawsuits.

Requested Revision: PCBs load reduction performance criteria should be in the form of Numeric Action Levels or a similar mechanism for triggering requirements for additional action and reporting. In addition, the permit should include contingency language that would allow for achieving compliance if a good-faith demonstration of efforts and actions by Permittees consistent with permit requirements falls short of achieving the load reduction performance criteria.

C.12.b. Assess Load Reductions from Stormwater-SMCWPPP-#72-DCB

- **Issue:** Provision C.12.b.iii requires that Permittees submit Permittee-specific proportions of load reduction responsibilities and supporting data to the Water Board by April 1, 2016 – four months after the effective date of the permit. Although Permittees and the RMP have spent considerable time and resources towards identifying PCB hot spots and watersheds producing greater levels of PCBs to the Bay, data have not been collected at a level to which proportions of load reduction responsibilities could confidently be assigned to Permittees. Furthermore, assigning Permittee-specific responsibilities with high levels of uncertainty upon which compliance could be based is not good public policy and could inadvertently unduly place responsibilities upon certain Permittees requiring the spending of public resources towards fictitious goals not based in reality.

  Requested Revision: Delete requirement to develop and submit Permittee-specific proportions of load reduction responsibilities.

C.12.c. Plan and Implement Green Infrastructure to Reduce PCBs Loads-SMCWPPP-#73-DCB

Provision C.12.c of the Tentative Order requires Permittees to implement Green Infrastructure projects during the term of the permit to achieve PCBs load reductions of 120 g/year over the final three years of the permit term. Additionally, Permittees are required to prepare a reasonable assurance analysis to demonstrate quantitatively that PCB load reductions of at least 3 kg/yr throughout the Permit area will be achieved by 2040 through implementation of Green Infrastructure plans required by Provision C.3.j.

- **Issue**: It is unnecessary to include performance criteria for PCBs load reductions through implementation of GI over the reissued permit term. PCBs load reductions will not be the driver for GI implementation during the reissued permit term. Regional Water Board staff has noted that based on extrapolation of data from the current permit term, the proposed metrics should be met via redevelopment in old industrial areas. Thus the proposed criteria would not influence GI implementation during the reissued permit term and meeting them would instead be dependent upon an activity that is not under Permittee's control. While we expect to learn valuable lessons via opportunistic early implementation of GI retrofit projects through Provision C.3.j.ii, the pollutant load reductions associated with these retrofits implemented over MRP 2.0 is anticipated to be relatively small.

  Requested Revision: Provision C.12.c should be deleted.

C.12.c. Plan and Implement Green Infrastructure to Reduce PCBs Loads-SMCWPPP-#74-DCB

- **Issue**: It does not make sense to prejudge that PCBs load reductions of at least 3 kg/yr throughout the Permit area should be achieved by 2040 through implementation of Green Infrastructure plans. The actual load reductions that Permittees expect to achieve via Green Infrastructure will be determined during the planning and reasonable assurance analysis required by Provision C.12.d., as

part of planning for achieving the overall PCBs TMDL allocations.

Requested Revision: Provision C.12.c should be deleted.

C.12.e. Evaluate PCBs Presence in Caulks/Sealants Used in Storm Drain or Roadway Infrastructure in Public Rights-of-Way-SMCWPPP-#75-DCB

- **Issue**: SMCWPPP agrees that this potential source of PCBs should be evaluated. However, given the numerous tight schedules during the early part of the permit term, we request an extra year to collaborate with other Bay Area stormwater programs to complete this work.

  Recommended Solution: Change the reporting due date from the 2017 to the 2018 Annual Report.

C.12.f. Manage PCB-containing Materials and Wastes during Building Demolition-SMCWPPP-#76-DCB

Provision C.12.f requires development of a program to manage PCBs in building materials and wastes during demolition. Based on Bay Area sampling and similar sampling in other areas, there appears to be a large standing stock of PCBs in certain buildings in the Bay Area, sometimes at concentrations that would likely exceed California hazardous waste levels. There is also a potential health risk to workers (e.g., at a demolition site) or building occupants exposed to PCBs in building materials. These problems are common to urban areas throughout the country. However, we are not aware that any data exist regarding the amount of PCBs-containing materials that are released to the ground during demolition and then mobilized into the MS4 by urban runoff, making it challenging to project with any certainty the actual water quality benefit of the proposed control program. Cost-effectiveness relative to other PCBs controls is also highly uncertain at this time.

- **Issue**: We don't know whether or not PCBs in building materials is a significant water quality issue. However, addressing the various potential problems associated with PCBs in building materials (i.e., water quality, human exposure at the site, and disposal) appears to be a worthwhile and "no regrets" cause. However, these issues should be addressed holistically on a statewide or federal basis rather than focusing on water quality controls in the Bay Area only. Meeting the Tentative Order's three year timeframe to develop a program to manage PCBs in building materials and wastes during demolition would likely require administration at the local level. This inappropriate and rushed approach would result in highly inefficient use of scarce public funds and likely be ineffective at comprehensively addressing the problems. It would also likely result in inconsistent programs across the Bay Area. Asking local agencies in the Bay Area to address the various issues with PCBs in building materials, which are to some extent common to urban areas throughout the country, makes no sense.

  Recommended Solution: Allow at a minimum the entire permit term for Permittees to work with the State, USEPA, the building industry, and other stakeholders to attempt to develop a comprehensive statewide or federal program analogous to current programs for asbestos and lead paint. Given the multiple environmental and public health issues in play, USEPA should play a large role in development of this program.

C.13 - Copper Controls

Provision C.13.b - Manage Discharges from Pools, Spas, and Fountains that Contain Copper-Based Chemicals-SMCWPPP-#77-DCB

- **Issue:** This provision contains new reporting requirements that require duplicative reporting of enforcement activities reported under Provision C.4 and C.5. Permittees are now required to report annually on any enforcement activities associated with this provision.
- **Requested Revision:** Reference other provisions where Permittees may more efficiently report permitting and enforcement activities.

C.14 - CITY OF PACIFICA AND SAN MATEO COUNTY FECAL INDICATOR BACTERIA CONTROLS

Provision C.14 contains requirements specific to the Pacifica State Beach / San Pedro Creek Bacteria TMDL. Pacifica State Beach and the San Pedro Creek watershed are within the jurisdiction of unincorporated San Mateo County and the City of Pacifica. SMCWPPP understands that San Mateo County and Pacifica plan to submit comments separately on this provision.

C.15 - CONDITIONALLY EXEMPTED DISCHARGES

C.15.b – Conditionally Exempted Non-Stormwater Discharges-SMCWPPP-#78-DCB

- **Issue:** There is no evidence that SMCWPPP's existing conditionally exempt non-emergency planned and unplanned potable water discharge program is not effective. It does not appear that continuing to protect water quality would requires relevant Permittees to be regulated in an alternative manner, (i.e., through SWRCB Order WQ 2014-0194-DWQ ["State Potables Permit"]), which represents a second, separate, and, as to their discharges, completely unnecessary NPDES permit. The State Potables Permit was, in fact, specifically amended prior to adoption to provide that drinking water system discharges which are or can be addressed through a municipal stormwater permit issued by a Regional Water Board will be regulated in that manner. This avoids a situation where a municipality has to obtain separate coverage under two permits and pay two separate permit fees or be on two separate reporting cycles.

  In responding to public comments, the SWRCB directed all Regional Water Boards to continue to specify potable discharge requirements in municipal stormwater permits and, on a going-forward basis, it left it up to them as to how best to craft such requirements: "[The State Water Board] takes no position on provisions or requirements within specific permits for MS4 owners and operators who are also water purveyors and whose MS4 permits also authorize drinking water discharges. Regional Water Boards adopting such permits *are charged with* determining appropriate requirements to protect water quality and address the needs of both the MS4 and drinking water discharges on a system-specific basis."

  Requested Revision: The Water Board should either restore Provisions C.15.b.iii (1) and (2) from the current MRP or craft new subprovisions that would specify that "Potable water discharges that meet the Discharge Specifications set forth in Section IV.A or the Multiple Uses or Beneficial Reuse terms set forth in Section VI of the Statewide General NPDES Permit for Drinking Water Systems Discharges, Order WQ 2014-0194-DWQ shall be deemed to be conditionally exempt provided that

the Permittees maintain records of these discharges, BMPs implemented, and any monitoring data collected."

GENERAL COMMENT

General - Permit Effective Date and Annual Reporting-SMCWPPP-#79-DCB

- **Issue:** The proposed effective date in the Tentative Order is December 1, 2015. This creates a situation in which the 2016 Annual Report (for FY 2015/16) will cover the end of the current permit and the beginning of the new permit. Regional Water Board staff has indicated that it will work with the Permittees on an Annual Report format that addresses this transition. However, changes to data collection and tracking methods in certain provisions will be difficult to implement in the middle of the fiscal year. These changes include, but are not limited to, the following:
    - C.3.h.ii.(6) – changes in O&M Inspection Plan requirements to track number of sites inspected instead of number of BMPs, addition of requirements to inspect pervious pavement systems, and associated changes to tracking databases;
    - C.4.d.iii.(3) (Industrial/Commercial Business Inspections) and C.6.e.iii.(2)(g) (Construction Site Inspections) – requirements to shift from tracking number of violations to number of enforcement actions, and associated changes to tracking databases.

Requested Revision: Change the effective date for these and other new provisions related to data collection and tracking to July 1, 2016, so that Permittees have time to adjust data collection, tracking and reporting methods, and so that the data collected within a given fiscal year will be consistent.

We look forward to continuing to work with you and your staff to resolve the issues described in this letter. Please contact me at 650/599-1419 or mfabry@smcgov.org if you have any questions or would like to further discuss any of our comments.

Sincerely,

Matthew Fabry, P.E.
Program Coordinator

Cc: Stormwater Committee
NPDES Technical Advisory Committee

34009 ALVARADO-NILES ROAD
UNION CITY, CALIFORNIA 94587
(510) 471-3232

July 10, 2015

Transmitted via email: mrp.reissuance@waterboards.ca.gov

Dear Dr. Mumley:

Thank you for the opportunity to comment on the next phase of the Municipal Regional Permit (MRP). While the City of Union City understands the need to routinely update the MRP and to evaluate or add new provisions that support the protection of our waterways, we have some concerns regarding the proposed Green Infrastructure provisions listed in Section C.3.j.

C.3.j. – Union City #1 – STL

Section C.3.j, *Green Infrastructure,* of the draft MRP requires preparation and implementation of a Green Infrastructure Plan to facilitate the inclusion of low impact development drainage design into storm drain infrastructure on public and private lands, including streets, roads, storm drains, parking lots, building roofs, and other storm drain infrastructure elements. Union City incorporated in 1959 and is largely built out. Inclusion of low impact development drainage design features into the City's existing infrastructure and buildings is not feasible due to the substantial costs associated with the retrofit of existing facilities necessary to satisfy this requirement. In addition, the amount of staff time related to project management and public outreach would also be significant.

Union City has experience with installing these types of improvements and is well aware of the associated costs and related impact on staff resources. The City is currently in the process of retrofitting portions of three existing streets to install rain gardens, which is one of the primary ways of treating stormwater runoff from roads and satisfying the provisions listed in Section C.3.j. The combined street length of the projects is approximately 1.5 miles with a total estimated construction cost of approximately $9.5 million. This equates to approximately $6.5 million per mile to install this type of drainage improvement within an existing street.

The City is currently developed with 237 miles of roadways. At an average cost of $6.5 million per mile, it would cost the City approximately $1.5 billion to retrofit its existing streets to install these types of facilities throughout the City. In addition, the City has expended substantial staff time for management of these projects as well as outreach to the public since these types of projects typically result in

temporary disruption to the neighborhood from construction activities as well as permanent impacts such as displacement of parking, removal of trees, and the need for additional right-of-way.

This is just one practical example of the substantial financial burden that the proposed Green Infrastructure requirement places on cities. Without associated funding to support these activities, the requirements under Section C.3.j. results in an unfunded mandate. Union City is supportive of incorporating these types of improvements into new streets and buildings as they are constructed but strongly objects to application of this provision to existing facilities and buildings.

If you have any questions regarding this correspondence, please contact Carmela Campbell, Planning Manager at {510) 675-5316 or via email at carmelac@unioncity.org.

Sincerely,

Tony Acosta, City Manager

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

July 10, 2015

Thomas Mumley
Assistant Executive Officer
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

Re: Tentative Draft Municipal Regional Permit (NPDES Permit No. CAS612008)

Dear Mr. ley:

Thank you for the opportunity to comment on the Water Board's tentative draft Municipal Regional Stormwater Permit (NPDES Permit No. CAS612008) for stormwater discharges from municipalities in Alameda, Contra Costa, San Mateo, and Santa Clara counties and the cities of Fairfield, Suisun City, and Vallejo in Solano County, dated May 2015.

General – USEPA #1 – STL

We have reviewed the draft permit (draft MRP 2.0) and want to underscore our support for Water Board's position of including clear milestones and deadlines to evaluate pollutant-specific progress towards necessary water quality improvements and restoring beneficial uses. Below we offer more specific support and some recommendations for your consideration.

C.11. and C.12. – USEPA #2 – STL

A. Total Maximum Daily Load (TMDL) Implementation-Mercury and PCBs

EPA supports the Water Board's inclusion of specific numeric mercury -and PCB milestones and deadlines within this permit cycle. We recognize these pollutant specific values are interim milestones to achieve step-wise progress in this permit as well as to measure progress towards attaining the final TMDL wasteload allocations (mercury in 2028 and PCBs in 2030) which are included for reference in this permit. This is consistent with EPA guidance (2014) that MS4 permits implement WLAs as either numeric effluent limits or clear, specific, and measurable milestones for assessing required pollutant load reductions.

C.12. – USEPA #3 – STL

Specific to PCBs, we support the Water Board's proposed accounting framework provided in the factsheet. EPA believes the permittees' experience with implementing BMPs for PCBs during MRP1.0 provides the lessons learned for continued efforts to install PCB control

measures in Bay watersheds. This framework is straightforward and will be useful in evaluating compliance within this permit term. Furthermore, permittees will be able to improve the accounting scheme during MRP 2.0.

C.12. – USEPA #4 – STL

Regarding PCBs in building materials (caulk), we concur with Water Board's desire to pilot a locally controlled program, which can be developed for region-wide consistency for PCB removal during age-specific building demolition. We recognize this program will require coordination with other Federal and State agencies; however it need not be started as a state-wide program.

C.12. – USEPA #5 – STL

EPA Land Division is able to offer the Regional Board technical support in development of guidance documents in preparation for program implementation.

C.12. – USEPA #6 – STL

We reinforce the Water Board's approach to allow for flexibility in determining the various control measures to achieve PCBs milestones and recommend this approach be retained in the final permit.

C.12. – USEPA #7 – STL

We also support the proposed accounting framework provided in the factsheet based on permittees' success with several PCBs pilot projects during the current permit term, and likelihood of continued permittee efforts,

C.12. – USEPA #8 – STL

we support Water Board's staff analysis that these milestones are feasible attainable in the next permit cycle.

C.12. – USEPA #9 – STL

We also endorse the Water Board's evolving 'program' to minimize PCBs from entering urban runoff via age-specific building materials and concrete sealants. Given this is new permit provision, we acknowledge the Water Board will need time to develop this program, which includes (at minimum) demolition and retrofit protocols concurrent with inter-agency coordination and discussions with permitttees on considerations of PCBs load reduction credits.

B. Trash Load Reductions

C.10. – USEPA #10 – STL

We encourage Water Board to clarify the intention and expectations regarding receiving water monitoring for trash. In this permit cycle, permittees will help pilot a receiving water monitoring program whereby at least one monitoring protocol is applied. Information learned from the 5 Gyres water column/otter trawl grant can inform whether that monitoring method should be continued or other creek monitoring method should be tried.

C.12. – USEPA #11 – STL

By year 2 of the permit term sampling stations should be identified either as a randomized sampling approach or piggyback off of existing creek monitoring sites as per existing permit requirements for other parameters.

C.12. – USEPA #12 – STL

***It** will also be helpful to identify the specific management/monitoring questions that will drive the sampling design.*

C.12. – USEPA #13 – STL

We wish to reiterate that evaluating trash reduction measures in the long term will be best served via a "trash tracker"-like system with a GIS platform is developed to manage the data, which currently is supplied through the Annual Report format, which can also be continuously improved.

C.12. – USEPA #14 – STL

Additionally, in our experience examining 2014 annual reports section C.lO, the lack of defined requirements around monitoring and measuring trash controls other than full capture, resulted in a highly variable level of effort and documentation. This high variability was an impediment to determining the weight of contribution such control actions had made towards trash reductions. As stated in our earlier comments, we recommend the permit language include minimum expectation for frequency of observations and that they be variable based on trash generation rates.

C. Green Infrastructure Plan Development and Implementation

C.3. – USEPA #15 – STL

EPA is a strong proponent for green infrastructure (GI) plans in MS4 permits. We see multiple benefits from developing and implementing GI plans, including pollutant removal, decreased flood risk, greener urban landscape, increased habitat and potentially infiltrations for groundwater replenishment.

C.3. – USEPA #16 – STL

EPA supports the draft MRP requirements for permittees to develop frameworks for green infrastructure plans (GI plans).

C.3. – USEPA #17 – STL

EPA recognizes that timeframes of 2016 and 2018, respectively, have been proposed as due dates for permittees to submit frameworks and complete plans to the Water Board. In the interest of developing feasible GI plans, EPA is open to extending these timeframes should permittees provide justification that additional time is necessary.

C.3. – USEPA #18 – STL

To facilitate understanding of what is expected of permittees, we encourage the Water Board to define the minimum and recommended components of GI plans with permit factsheet.

C.3. – USEPA #19 – STL (Note from Selina. All of Attachment A incorporated with this label.)

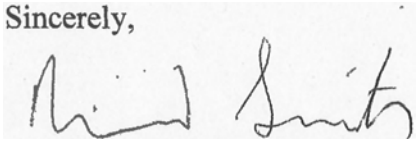
To facilitate, we offer some suggested components of GI plans in Attachment A.

C.3. – USEPA #20 – STL

Also, we believe the Water Board should, in the permit, establish its ability to reject GI plan submittals if found deficient; whereas, the Water Board need not approve each submittal.

Finally, we want to acknowledge Water Board staff for their significant time and effort in developing the permit content and language. We look forward to continued coordination with Water Board staff, as well as all stakeholders, towards permit renewal. If you haye questions, please contact either Luisa Valiela of the Watersheds Section at (415) 972-3400 or Peter Kozelka of the NPDES Permits Section at (415) 972-3448.

Sincerely,



David Smith, Manager
NPDES Permits Section (WTR 2-3)

Outline below are some potential ideas for Green Infrastructure (GI) plans to be developed by Bay Area permittees during MRP 2.0. Components provided below primarily arise from Los Angeles Regional Water Board guidance for reasonable assurance in watershed management plans as part ofMS4 permit. Many components, but perhaps not all, will be applicable to GI plans for Bay Area. EPA encourages the Water Board to consider these ideas, modify as they deem appropriate, and include similar description of GI framework in the MRP 2.0 factsheet. We recognize the continued partnership of MS4 permittees, Water Board, EPA and other stakeholders to discuss these ideas prior to inclusion into final GI plans.

A. *Identify the water quality priorities with watershed.*
    1. *Include any applicable required water quality milestones and compliance deadlines*
    2. *Describe watershed features, waterbodies any other relevant environmental setting information*
    3. *Outline otp.er municipal specific goals to addressed; e.g., flood risk, sea level protection, groundwater infiltration.*

B. *Describe current BMPs and estimate existing pollutant loads*
    1. *List pollutant sources in watershed*
    2. *Provide map of major MS4 outfalls*
    3. *List any current BMPs within watershed (structural and non-structural)*
    4. *Using existing data (up to 10 yrs), give estimates of pollutant loads from watershed. (could be cone-based if no flow measurements available)*
    5. *Define on pollutant specific basis*
    6. *To extent data available and feasible, assess critical condition loads*
    7. *Describe vari bility of estimations.*

C. *Estimate required pollutant load reductions*
    1. *To extent feasible, provide estimate of pollutant load reductions, if mass-based then calculate difference between current and allowable loads; if concentration-based then define the two values.*

D. *Identify future control measures/BMPs/strategies to be implemented*
    1. *Describe drainage areas for implementation*
    2. *Identify control measures for stormwater and non-stormwater discharges; include number, location(s) and type; i.e., structural or non-structural controls, within new development, retrofit of existing development, stream/habitat restoration projects,*
    3. *Clarify pollutants to be addressed*
    4. *Define/map location of each control measure in watershed/jurisdiction*
    5. *Quantify upstream drainage area captured by each BMP*
    6. *Clarify if municipal effort only, private efforts or public/private projects*
    7. *Identify if project is within local jurisdiction or regional and describe cities involved.*

E. *Provide schedule of implementation*
    1. *Identify interim milestones and dates for achievement (within this permit cycle)*

2. *Identify all future and final dates for achievement*
3. *Demonstrate that existing and future control measures will yield final pollutant load reductions and/or meet receiving water limits.*

F. *Provide Pollutant Reduction Plan*
1. *Identify compliance points (should be consistent with any existing regulatory compliance locations; e.g., TMDL monitoring sites expected to assess compliance)*
2. *Consider assessment locations in association with MS4 outfalls to monitor pollutant load responses due to upstream control measures.*
3. *Describe and evaluate selected control measures – appropriate for pollutant and sizing for load capture*
4. *Demonstrate selected control measures have reasonable assurance to meet interim/final requirements.*
5. *Describe adaptive management process if pollutant milestones are not met and added BMPs are needed*
6. *Include timeframe for future re-assessments.*

G. *If model used, provide description of watershed model*
1. *Identify model type; e.g., watershed, receiving water, BMP performance, empirical*
2. *Provide (minimum required) model components: input data, parameters, BMP performance parameters, output*
3. *Describe model calibration acceptance criteria*
4. *Describe efficiency for BMP performance parameters*
5. *Demonstrate model outputs for existing pollutant loads will be addressed by combination of control measures/BMPs to achieve final milestones.*

H. *Describe corresponding water quality monitoring program*
1. *Identify parameters of concern, all monitoring sites, sampling frequency (including wet and dry weather events)*
2. *Clarify which monitoring sites are MS4 outfalls*
3. *Briefly describe analytical methods and QA procedures to support monitoring*
4. *Describe any future monitoring locations and anticipated timeframe of data collection*
5. *Briefly describe pollutant sources upstream of monitoring sites.*

I. *Identify post-implementation tracking assessment efforts*
1. *Once completed, describe the BMPs implemented, including any modifications from original project design*
2. *Describe assessment procedures for evaluating effectiveness of control measure and corresponding pollutant load reductions for each implemented BMP, as necessary*
3. *Provide schedule for re-evaluation of BMP load reductions over long term.*

CITY OF
WALNUT
CREEK

June 25, 2015

Mr. Bruce Wolfe
Executive Officer
California Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay Street
Oakland, CA 94612

Via email to: mrp.reissuance@waterboards.ca.gov

Subject: City of Walnut Creek's Comments on the Tentative Order Reissuing the Municipal Regional Stormwater Permit (MRP 2.0)

Dear Mr. Wolfe and Members of the Board:

Thank you for the opportunity to comment on the Tentative Order reissuing the Municipal Regional Stormwater Permit (MRP 2.0). The City of Walnut Creek strongly supports the goals of reducing stormwater pollution and protecting our local creeks, the delta and San Francisco Bay.

General – Walnut Creek #1 – STL

For the past two years, two staff members from the City of Walnut Creek have been participating at the Steering Committee meetings representing the Contra Costa Clean Water Program and have engaged in an ongoing dialogue with your staff regarding MRP 2.0.

Many new ideas and approaches that build upon experience gained were generated during this process, which included discussions about consolidating or eliminating "less beneficial tasks" in the permit, extending implementation dates, reducing reporting requirements, where those items maintained or increased the effectiveness of permittee efforts in protecting water quality. The process included discussions about the reality that new or additional funding sources will be required to implement the new and expanded requirements contained in MRP 2.0, that these sources have not been identified, and that it is important to allocate limited resources in ways that would focus upon, and maximize effectiveness of, the major new and expanded mandates.

1666 North Main Street, Walnut Creek, CA 94596 www.walnut-creek.org

Despite the extensive effort on all parts, few of these ideas were carried forward into MRP 2.0. Therefore, and with great reluctance, the City of Walnut Creek opposes MRP 2.0 as it is currently drafted. We ask that your Board consider the following comments, and direct Water Board staff to work with the permittees to revise the Tentative Order in a way that recognizes limited resources, acknowledges the difference in actions and challenges of permittees to date, and focuses resources on those actions that will produce the greatest benefits to the goals of the program.

The City of Walnut Creek's specific concerns are as follows:

Provision C.3. – Walnut Creek #2 – STL

Green Infrastructure (GI) planning should be required only at the regional level.

The Tentative Order includes a new mandate to develop and implement Green Infrastructure Plans. We support the ultimate goal of significantly reducing the amounts of urban runoff pollutants (such as PCBs and mercury), flowing into receiving waters. However, the Tentative Order mandates each permittee implement Green Infrastructure plans on an individual project level and imposes unachievable deadlines. Because it requires significant investment on the part of all permittees, we ask that the Board consider limiting the efforts for permit 2.0 to planning at the regional level only.

Provision C.3. – Walnut Creek #3 – STL

Many city streets have only a 50' right-of-way. This is not sufficient width to comply with the complete streets requirements to provide safely for all modes of transportation and to provide the bioswales that are required by the Tentative Order. We must have some flexibility to balance all community needs and requirements with the need to meet water quality standards. In cities, such as Walnut Creek, that have very low potential for PCBs and mercury, mandating Green Infrastructure as proposed is not fiscally responsible. The City should be allowed to find the right balance for its community. Low-impact development (LID) facilities should be constructed where they make sense but not at the cost of needed community facilities. The permittees are in the best position to determine that balance for their respective communities. Finally, if you retain these unrealistic requirements, the language in Provision C.11 (Mercury Reduction) and C.12 (for PCBs reduction) should be consistent.

Provision C.3. – Walnut Creek #4 – STL

Special Projects Provision should consider smart growth elements.

The definition of Floor Area Ratio and Gross Density in the Tentative Order needs to be modified to include parking structures and to exclude areas dedicated to the public for pedestrian activities or access. The language in the Tentative Order creates a substantial disincentive for smart growth development in suburban downtown areas. This is especially true for the City of Walnut Creek where many years ago the voters approved height restrictions that limit the ability for any development project to achieve

the minimum density required in the Tentative Order. With the locally-imposed setbacks that the project applicant must consider and the other setbacks required by the California Building Code for fire access and building egress, and utility requirements, the requirement in the Tentative Order mandating the construction of low impact development in these suburban downtown areas probably means that redevelopment, which will otherwise benefit water quality, will probably not be economically feasible.

For example, a mixed-use project in downtown Walnut Creek that is currently under construction include in its frontage, a public courtyard. Under the proposed definition in the Tentative Order, the project would have eliminated this important public amenity plaza as the project cannot meet the more restrictive density requirements.

Provision C.10. – Walnut Creek #5 – STL

MRP 2.0 should include incentives for other control measures that reduce trash and the timeline should be extended.

As the City of Walnut Creek has successfully reduced its trash load by 51 percent within the past five years, there are only very limited opportunities remaining to further reduce our trash load with our municipal maintenance efforts. The larger opportunities lie within properties outside the City's jurisdiction (such as BART, Caltrans, and schools). To reach next goal of 70% trash reduction, we will need more time to engage the private and other public property owners to reduce trash on their properties. To be ultimately successful in achieving this goal, Water Board needs to include trash reduction provision in the permits of BART, Caltrans and the school districts.

Provision C.10. – Walnut Creek #6 – STL

The Tentative Order requires permittees to ensure private properties plumbed directly to municipal storm drains are equipped with full trash capture divides or to verify that these locations are considered to have "low" trash generation rate. To fulfill this provision, permittees will have to undertake costly efforts to investigate and map these properties. We ask that the Board considers deleting this provision. Instead, we request that the Board consider utilizing the inspections and enforcements of these properties as outlined in Provision C.4 (Commercial and Industrial inspections) to control/reduce trash generation.

Provision C.10. – Walnut Creek #7 – STL

Finally, the maximum credit of 5 percent that permittees can receive for product bans (from the original 20 percent maximum credit) is a dis-incentive for future source control actions. Since the adoption of both plastic bag and polystyrene-based food service ware ordinances, we have begun to see their positive impacts to our local environments. The number of litter of such materials has significantly decreased- in some areas, disappeared. Source control (along with enforcement efforts) is one measure that the

City of Walnut Creek has adopted that has been demonstrated to be working effectively. We believe that the maximum credit for source control should remain at 20 percent, and that it is not appropriate to change the percent after we acted in reliance upon it.

C.12. – Walnut Creek #8 – STL

Permittees Must Have a Clear Path to Compliance

Considerable time and effort has been spent discussing how to reduce levels of pollutants of concern flowing into our waterways. However, as drafted, MRP 2.0 provides no clear path for permittees to avoid noncompliance. Some examples include:

- The Tentative Order mandates achieving specified reductions in the total quantity of PCBs discharged from municipal storm drains. A major means of achieving these reductions is through removal of PCBs during building demolitions. However this fails to acknowledge that permittees have no control over timing of when properties redevelop. Rather than applying controls to a specified number of buildings demolished, we believe it will be more effective to require the development and implementation of a program to control PCBs during building demolitions, and that having and implementing such a program should constitute compliance.

C.12. – Walnut Creek #9 – STL

- The Tentative Order includes (in the Fact Sheet) an incomplete method to achieve stipulated reduction credits for each building demolished with PCB controls, for each redeveloped site with new bioretention facilities, and for finding and abating concentrated sources of PCBs. Looking for hidden PCB sources is a good idea, but permittees can't guarantee that they will find them and be able to abate them.

C.12. – Walnut Creek #10 – STL

We ask that development of a program to systematically identify and review potential sources, and refer them to appropriate agencies for abatement, be the basis for credit toward compliance.

The City of Walnut Creek appreciates the efforts by your staff to develop permit requirements that are implementable and effective in improving surface water quality-a goal which we share. We look forward to resolution of the remaining issues and to implementing MRP 2.0.

Sincerely,

Bob Simmons

Mayor