



# City of East Palo Alto

## Office of the City Manager

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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). While the City is in agreement with SMCWPPP's concerns, listed herein are those issues which are of particular importance to the City of East Palo Alto.

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 Permittees 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.

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. 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.

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 - 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 - 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 of the 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.

- **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. 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 - 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 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.

Green Infrastructure 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. Due to existing research for compliance in C.11 and C.12, it is clear that there are a lot of unknowns in terms of cost/benefit for GI. 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 GI projects within the permit term are not required for compliance with GI pollutant load reductions, but could be counted on a voluntary basis for future credits.

- **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. 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 - 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.10 - TRASH LOAD REDUCTION

### 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<sup>2</sup> 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 - 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 – 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.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 - 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

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 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. 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 of this 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.

- **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. Plan and Implement Green Infrastructure to Reduce PCBs Loads**

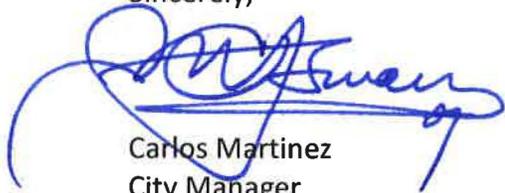
Provision C.12.c of the Tentative Order requires Permittees to implement Green Infrastructure projects during the term of the permit to achieve PCBs load reductions of 120 g/year over the final three years of the permit term. Additionally, Permittees are required to prepare a reasonable assurance analysis 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:** In East Palo Alto, quantifiable PCB load reductions will not be the driver for GI 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 GIs into Capital Improvement Programs. The proposed criteria is unlikely to influence GI 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](mailto:mdaher@cityofepa.org), if you have any questions or would like to further discuss any of our comments.

Sincerely,



Carlos Martinez  
City Manager