



February 10, 2016

State Water Resources Control Board
Office of Chief Counsel
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RE: PETITION OF THE CITY OF DUBLIN FOR REVIEW OF WASTE DISCHARGE REQUIREMENTS ORDER NO. R2-2015-0049 (NPDES PERMIT CAS612008), MUNICIPAL REGIONAL STORMWATER NPDES PERMIT FOR MUNICIPALITIES WITHIN THE COUNTIES OF ALAMEDA, CONTRA COSTA, SANTA CLARA, AND SAN MATEO, THE CITIES OF FAIRFIELD, SUISUN CITY AND VALLEJO, AND VALLEJO SANITATION AND FLOOD CONTROL DISTRICT; ISSUED BY THE SAN FRANCISCO BAY REGIONAL WATER QUALITY CONTROL BOARD: REQUEST TO ACTIVATE PETITION, WITHDRAW ARGUMENTS II.F AND II.H FROM ATTACHMENT A OF THE PETITION, AND TO FILE ADDENDUM TO PETITION

SWRCB/OCC FILE A-2455(h)

To Whom It May Concern;

On December 18, 2015, the City of Dublin (“City” or “Petitioner”) submitted a Petition for Review to the California State Water Resources Control Board (“State Board”) pursuant to section 13320(a) of the California Water Code (the “Water Code”), requesting that the State Water Board review the action by the California Regional Water Quality Control Board, San Francisco Bay Region (“Regional Board”) described above. At that time, the City requested that the Petition be held in abeyance pending further notice to the State Board in the event that the City wished to request that the review process be activated. On February 5, 2016, the City received an acknowledgement of receipt letter from the State Board, which granted abeyance status and assigned the Petition File No. A-2455(h).

After filing the Petition, the City has reconsidered whether to keep its Petition in abeyance and has instead decided to seek activation. Therefore, the City at this time requests that our Petition be removed from abeyance status and activated for full consideration by the State Board.

In connection with such activation, the City specifically requests to withdraw Arguments II.F and II.H, as set forth in Attachment A of its Petition, from the State Board’s consideration. These arguments also appear as the fifth and sixth bullet points on page 3 of the Petition. If withdrawal of Arguments II.F and II.H is not feasible, then in the alternative, the City requests that the State Board dismiss Arguments II.F and II.H without granting review of such arguments.

In addition, we request that the State Board consider the following Addendum to Attachment A, which provides further support of the issues and arguments described in our Petition. This Addendum does not introduce any new issues or

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evidence, but provides the State Board with a more complete submission on the issues and arguments raised previously in order to assist the State Board in considering this matter.

Addendum

1. Trash Load Reduction Visual Assessment Requirements.

In our Petition for Review and Statement of Points and Authorities Argument II.B, we maintain that the Trash Load Reduction visual assessment requirements of trash load reduction outcomes of Provision C.10.b.ii.b are unreasonable, inappropriate and legally defective.

Throughout the public comment and hearing process, the City and the Alameda Countywide Clean Water Program have maintained that visual assessments should not be used to determine compliance with the Permit. 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; 2) there is a significant element of subjectivity to the assessments that cannot be eliminated;¹ 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 variations from one assessment to the next has not been determined. In addition, conducting visual on-land assessments is very time consuming and draws staff and finite resources away from actual trash reduction efforts that directly improve water quality.²

Regional Board staff's response is that photo documentation, or other assessment methodology, can be proposed by permittees to determine trash reduction outcomes. However, photo documentation is subject to the above shortcomings and reliable documentation has not been developed for other assessment methodology. For example, the complexity and difficulty of the required visual assessment methods is discussed in the hearing testimony of Obaid Khan.³

The City therefore requests that visual assessments only be used for qualitative assessment during this Permit term and not be used for the purpose of determining compliance.

2. Trash Load Reduction Receiving Water Monitoring Requirements

In our Petition for Review and Statement of Points and Authorities Argument II.C, we maintain that the receiving water monitoring provisions, development and testing plan, and reporting requirements of Provisions C.10.b.v and C.10.f are inappropriate and improper. Conducting receiving water observations as a trash monitoring methodology is yet another requirement that will take significant resources without any clear water quality benefit and will result in the diversion of resources from actual trash reduction efforts. No protocols have been established, and there is tremendous variation in the amount of trash over time and from site to site, depending on the timing and size of storm events. It is not clear whether the data produced from this effort could guide future management actions. 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.⁴ The receiving water monitoring requirements for trash should be removed from this Permit and be 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.⁵

¹ See the July 8, 2015 workshop/hearing comments of Jim Scanlin, Program Manager of the Alameda Countywide Clean Water Program - July 8 RT at 138—139: 19-11.

² See the July 10, 2015 comment letter submitted by the Alameda Countywide Clean Water Program, p.6.

³ Comments of Obaid Khan, City of Dublin – July 8 RT at 199-200: 21-15.

⁴ See comments of Chris Sommers - RT July 8 at 173: 10-14

⁵ See the July 10, 2015 comment letter submitted by the Alameda Countywide Clean Water Program, p.6-7.

At the July 8, 2015 Regional Board workshop/hearing on trash requirements, Allison Chan of Save the Bay acknowledged that receiving water monitoring has not yet been defined, and suggested different types of monitoring.⁶ Mr. Khan's testimony regarding the complexity of receiving water monitoring is also helpful.⁷ At the November 18, 2015 Regional Board hearing, staff acknowledged that receiving water monitoring methods are not yet meaningful in terms of influencing on-land trash reduction actions, and that permittees are concerned that available receiving water monitoring methods are not effective and unduly expensive to implement.⁸ Regional Board staff then acknowledged that the intent of the receiving water monitoring requirements is to develop and test additional methods during this Permit term for broader application during the next permit's term. This testing will include monitoring at representative sites.⁹ The testimony of Nancy Humphrey of the City of Emeryville demonstrates the extensive amount of time that municipal staff expends in complying with reporting requirements.¹⁰

It is unreasonable to require permittees to develop and test receiving water monitoring methods that are not yet demonstrated to be reliable and effective methods for measuring compliance. It is also unreasonable to use the results of these unproven monitoring methods as a basis for determining permit compliance. While it may be appropriate to seek and test new receiving water monitoring methodologies during this Permit term, such methods should only be used as a developmental protocol, not as a permit compliance tool. Permit compliance must be demonstrated with reliable and proven monitoring methods.

At the Regional Board's November 19 hearing, Board Chair Young stated that she understands that many permittees are very concerned about the burdensome reporting requirements in the Permit, and that the Regional Board is concerned as well. She then requested staff and permittees to start thinking about ways to make the reporting more efficient.¹¹ While this is encouraging, we must emphasize that the possibility of future monitoring volume reduction is not of particular benefit to permittees during this 5-year Permit cycle.

In Conclusion, the City of Dublin respectfully requests that the State Board activate our Petition for Review, allowing for the withdrawal/dismissal of Arguments II.F and II.H from Attachment A, and to consider the above Addendum material.

Sincerely,
Andrew Russell



Assistant Public Works Director/City Engineer
City of Dublin

cc Bruce Wolfe, Regional Board Executive Officer
See next page

⁶ RT July 8 at 78: 10-24.

⁷ RT July 8 at 200-201: 16-9.

⁸ RT November 18 at 21: 25-4.

⁹ RT November 18 at 21: 18-22.

¹⁰ RT July 8 at 166-167: 15-7.

¹¹ RT November 19 at 199-200: 21-11.

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