

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.

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). 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.

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. 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.

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. 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. 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

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

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 exists¹ 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

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

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 density³). 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

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

- **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.

- **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

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.

- **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.

- **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).

- **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.

- **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 below⁴) 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)

- **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

- **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)

- **Issue:** Provision C.5.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.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

- **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)

- **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

- **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

- **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

- **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.

- **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.

- **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

- **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

- **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

- **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)

- **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

- **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

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

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 *Hyaella 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 *Hyaella 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 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

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.

- **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.

- **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

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

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 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

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.”

- **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.

- **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.

- **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.

- **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). 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.

- **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.

- **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

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

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.

- **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

- **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

- **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

- **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

- **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)

- **Issue:** Provision C.10.a.ii.b (Trash Generation Area Management) requires Permittees to map and assess ALL private drainages 5,000 ft² 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.

- **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)

- **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

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

- **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

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

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

- **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

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.

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.

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

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.

- **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, 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.

- **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.

- **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.

- **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

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.

- **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

- **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

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

- **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

- **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 require 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

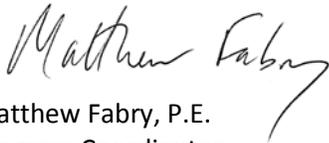
Permit Effective Date and Annual Reporting

- **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