

July 10, 2015

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

**Subject: Comments on the Tentative Order Reissuing the Municipal Regional NPDES Permit (MRP 2.0)**

Dear Mr. Wolfe and Members of the Board:

Thank you for the opportunity to comment on the Tentative Order reissuing the Municipal Regional Stormwater Permit (MRP 2.0). Contra Costa County (County) continues to support the Water Board's objectives of reducing stormwater pollution and protecting our local creeks, the Delta and San Francisco Bay.

In the spirit of collaboration, Contra Costa County asks the Water Board members to consider the following issues and comments, and direct Water Board staff to continue to work with permittees to revise the Tentative Order into a permit that will create a foundation where the Permittees can succeed.

**Issue 1: Major new and expanded mandates should be offset by eliminating less beneficial tasks**

The draft Tentative Order includes a new mandate to develop Green Infrastructure Plans. This coordinated, multi-year effort represents a significant paradigm shift toward developing comprehensive long-range plans that will significantly reduce the amounts of urban runoff pollutants, including the pollutants of concern, flowing into receiving waters. It will also require significant investment on the part of all permittees. At the same time, the County will need to dramatically reduce the amount of litter and trash that enters into our stormdrain network. These substantial efforts should be balanced with reductions in permit requirements that provide less benefits.

**Issue 2: Require projects with approved vested tentative maps issued prior to 2005 to implement new conditions of approval (to comply with Provision C.3)**

The County has no legal authority or mechanism to impose additional requirements on projects with approved vested tentative maps. It will take State legislation to create this authority. It is seriously doubtful that such legislation would be approved by the California Legislature and signed by the Governor. The few developments which remain unbuilt will have a minimal impact upon water quality and stream channel stability.

**Issue 3: The Cost to develop a "Green Infrastructure Plan" (GI Plan) to treat stormwater runoff from many impervious surfaces needs to be offset by reduction in other stormwater pollution efforts**

The County will be required to assess the unincorporated urban areas built between 1945 and 1980 for a watershed/drainage area focused GI Plan. The Transportation Division of the Public Works Department will need to rewrite the Capital Road Improvement Plan for these areas to include the LID to treat POCs. This will be a massive undertaking, involving the majority of the County's 17 unincorporated communities. The County Watershed Program is fully supportive of developing this plan. The County is planning to budget \$1,000,000 over five years to develop the GI Plan. The County will not only assess County roads, but also, County buildings and properties as part of the GI Plan. The estimated cost to develop the plan is \$200,000 per year the County can't spend on other stormwater pollution reduction activities. Contra Costa County needs commensurate reductions in other NPDES requirements to allow it to meet its budget limitations.

**Issue 4: Impact of implementing the GI Plan on Road Funds**

Implementation of the GI Plan in public road rights of way will be funded through funds used to build and maintain road infrastructure. Integration of GI features will not only radically increase the cost of capital road, sidewalk, and trail improvements; it will compete with road funds used to maintain the existing County roads. With more Road Funds being spent on GI features, less money will be available for road maintenance. The quality of the pavement will worsen, the risk of pavement failure will increase, which will require more money to repair. This will impact the safety and driving experience of the traveling public. Revenue for roads has been decreasing for some time, and are expected to decrease even more in the future.

**Issue 5: Ability to monitor mobile cleaner businesses**

There is no doubt mobile cleaners is one of the most difficult industries to regulate. They are often single-truck operations, which are owned and operated by a single individual. They often work within several municipalities, even different counties. Contra Costa County, like most cities, issues business licenses to small business like this. Very

few people apply for a permit to operate mobile cleaning devices. Implementation of the proposed program would drive these businesses further underground. An initial outreach campaign implemented through BASMAA to Bay Area business listed in phone books and internet directories would be a more effective approach.

**Issue 6: Requirements for multiple advertising campaigns split stormwater dollars and dilute effectiveness of message effort**

Requiring multiple outreach and education campaigns in a five-year permit term splits tax payer dollars leading to short campaigns with limited funding to reach the desired audience. A single, united campaign, chosen by BASMAA Board of Directors that is implemented over the entire permit term, would be more effective. Ideally, the campaign would focus on stormwater awareness, something akin to "Spare the Air" or Keep Tahoe Blue," and would run for several permit terms.

**Issue 7: Diversity and geographic distribution of unincorporated Contra Costa County communities requires individualized trash reduction strategies and longer implementation time frames.**

Unincorporated Contra Costa communities are distinct and require individualized approaches for implementation of NPDES issues. County Watershed Program staff prepared 19 community-based trash reduction plans, which are treated as primary Trash Management Areas. Each of the community trash plans are tailored to the unique capabilities and challenges the community faces. What may work in one community, may not work in another. Thirteen of these communities have Municipal Advisory Councils (MACs), whose members are critical resources of knowledge, enthusiasm and leadership in their communities. The MACs must be consulted when proposing activities that will affect the community. This slows down the planning and implementation process. The County requests Regional Board staff take these challenges into consideration when evaluating compliance of the trash provisions of the MRP 2.0.

**Issue 8: Infeasibility to map private storm drain system and requirement to install trash capture devices for private storm drains**

This is a hugely expensive proposed condition, especially in older communities. The cost for the County to map or a private property owner to prove that a storm drain inlet on their property does not discharge to the MS4, would be prohibitive and seen as over regulation by most people. It appears that the intent is to focus on stormdrain inlets in commercial parking lots. These facilities are already inspected as part of the commercial and industrial inspection program (C.4). This program is already used to addressing trash in unincorporated Contra Costa County. Litter in a parking lot is a "potential discharge"; litter in the storm drain inlet in the parking lot is a "violation," as is business related litter in the gutter or storm drains adjacent to the business. Contra Costa County already works with businesses with chronic trash problems to either, conduct regular

on-land clean-ups, sweep on a regular basis, and/or install trash capture devices in parking lots. The County encourages the Water Board to allow municipalities to use their existing authority to address trash on private properties.

**Issue 9: Specifying maintenance frequencies for trash capture devices**

Maintenance intervals for trash capture devices are best set through a monitoring program. The County recommends that the Permit require a minimum schedule of *monitoring*. Based on the results of the monitoring, maintenance of in-line and drainage inlets trash capture devices should be scheduled accordingly. The schedule proposed in C.10.b.i.a is appropriate for the monitoring frequency. The County supports maintaining inspection and maintenance records for Water Board use, as needed.

**Issue 10: Diluted offset ratio for instream clean-ups removes incentive to remove trash within-stream channels**

The County supports giving credit for in-stream clean ups. These efforts represent the last chance to remove litter and trash before flowing in to larger and deeper bodies of water. They also represent excellent opportunities to educate volunteers about the importance of stream ecological integrity. The County believes the 10:1 offset ratio is so dilute that it may require far more clean-up events than staff and volunteers are capable of sustaining.

Another issue is the calculation of the trash rate for in-stream clean-ups. It is not clear what area the proposed trash rate calculations apply. Contra Costa County believes it is inappropriate to assign trash rates for streams, as the stream area itself does not generate trash. It receives it from upland areas that drain to the creek. The County seeks clarification regarding how to use the formula. Should municipal staff assess the trash load (gallons/acre) and assign a trash rate category (low through very high) for the area to be cleaned? Should staff attempt to estimate the drainage area discharging into the clean-up area? Or should a different method be used instead? The County proposes assessing the trash levels in the in-stream clean-up area prior to the clean-up event, using the EOA's reference pictures prior to the clean-up. And, repeating the process after the clean-up. Another option would be to calculate the gallons of trash removed (using a proxy of the number of full trash bags times the gallon volume of each) divided by the number of acres treated (estimated using a GIS tool). Before and after pictures of reference areas should also be required using any protocol.

**Issue 11: No credit for trash reduction activities that fail to make a "quantum" change in trash rate**

The decision to use broad categories for trash rates has greatly simplified the trash reduction accounting process, but it loses the finesse of crediting efforts that reduce trash levels at less than quantum levels (e.g. from "high" to "medium"). Water Board

staff have considered authorizing intermediate credit for actions by allowing post treatment calculations of trash loads at the lowest rate for each category. The County strongly supports this approach. The MRP needs to create incentives to try different approaches or methods that may take time to fully develop benefits. This past Spring residents of Bay Point cleaned up the Bel Aire Trail (a PG&E and EBMUD owned utility corridor). Fifty volunteers cleaned up a staggering amount of trash, but the corridor was still "very high" under the visual assessment. County staff believes future efforts will build upon the initial success. These efforts need to be rewarded.

**Issue 12: Diluted offset ratio for actions to reduce direct discharges into Waters of the State**

The County appreciates Regional Board's consideration of additional opportunities for trash-challenged communities to take credit for removal of illegal dumped items directly into natural streams and flood control channels. The County is very interested in this program. It will require additional staff resources to fully implement. County staff are concerned the 10:1 offset ratio will not provide a significant enough incentive to justify the costs. The County encourages Regional Board staff to work with interested municipalities to refine the accounting scheme to everyone's benefit.

**Issue 13: Requirement to update trash generation rate maps annually is burdensome**

Updating trash generation rate maps is not an easy endeavor. The County is actively trying different techniques and focusing on different areas with its limited resources. Trash maps are not static. Calculation of trash reduction and development of maps to reflect trash rates at any given time take a lot of staff effort and taxpayer dollars. The County encourages Regional Board staff to consider when they really need to know this information, and to limit these calculation exercises to these times, for example, the 70% action level in 2017.

**Issue 14: Providing credit for activities that lay the foundation for future trash reduction**

Contra Costa County has a three tiered strategy to reduce trash in our most trash-challenged communities. To quickly reach the 40% trash reduction requirement the County hired a private company to pick up litter in the road rights of way in our areas with the highest trash rates. County Watershed Program staff dubbed this initial strategy as "trash service." This approach is very expensive and does little to change behaviors of community members. The second tier, called "Self Service," will initiate in FY 2015-16. This approach will use local non-profit organizations to not only conduct on-land and in-stream clean-ups, but also help design and largely implement local education and outreach efforts to lay the foundation for a cultural change to where community members will refrain from littering. The third tier, "No Need for Service" will

be the community that produces little or no trash that can enter into the storm drains, local creeks, the Delta, or the Bay.

In order to create the cultural change within trash-challenged communities, the County will need to implement several programs that will not create immediate, tangible trash reduction. They will lay the foundation for the behavior change required to achieve a trash-free community. These activities should be provided some level of credit. Contra Costa County proposes a maximum 5% credit for planned, coordinated, and community-targeted education and outreach programs. Other trash-challenged cities and counties may also benefit from such an approach.

**Issue 15: Very few "Old Industrial" properties have the potential to discharge PCB-tainted sediment in unincorporated Contra Costa County**

Unincorporated Contra Costa County has over 1,000 properties that had a land use designation, or zoning, for industrial uses between 1945 and 1980 (the period when PCBs were used). After removing those properties that had been capped with impervious surfaces, redeveloped into other uses, or visually assessed and deemed unlikely to potentially discharge sediment, there were less than 20 properties available to sample for PCBs. Consultants took sediment samples from road rights of way adjacent to these properties, which are currently being analyzed by a local lab. But the small number of sites which could potentially produce PCBs entering into the MS4 brings into question the potential benefits of targeting illicit discharge from old industrial properties.

**Issue 16: The County has limited ability to stop PCB-tainted sediment from entering into receiving waters in its most PCB dense areas**

The County, like many municipalities, will pursue a three-prong path to achieve Mercury (Hg) and PCB reductions in stormwater. The first, stop PCB-tainted sediment from entering the storm drain system and local receiving waters, will require substantial assistance from the Water Board. County staff are committed to investigating and using its enforcement response plan to require property owners to implement sediment controls to keep PCB-tainted sediment on-site. It will utilize County ordinances to issue fines, if necessary. But municipal fines pale in comparison to administrative civil liabilities issued by the Regional Board. The County anticipates requesting assistance from the Regional Board, and strongly encourages the Regional Board to have adequate staff resources to assist the County and other PCB-challenged communities.

The County will also implement enhanced operations to keep County roads free of PCB-tainted sediment. Unfortunately, the majority of roads adjacent to properties that have high potential for PCBs from old industry do not have curb, gutter, or storm drains. This will make enhanced municipal operations, like street sweeping and storm drain inlet

cleaning, ineffective. The County will prioritize these areas for early implementation of the Green Infrastructure Plan.

**Issue 17: Majority of properties suspected of containing high levels PCBs are owned by agencies over which the County has no authority**

County Watershed staff strongly suspect that the greatest source of industrial legacy PCBs lies in railroad rights of way and areas associated with electrical utilities. The County intends to sample road rights of way adjacent to many of these land uses. If these areas have PCB-tainted sediment, the County has no authority to implement its Enforcement Response Plan to require the property owner to abate discharge of tainted sediment. Contra Costa County will rely on the authority of the Regional Board to take enforcement action. It was disheartening at the June 8, 2015 hearing to hear testimony from the City of Oakland indicating that two years after referring specific properties to the Regional Board, staff had yet to act in tangible ways. The County and other municipalities will need the Water Board to take action quickly against any property owners against whom the municipality has no authority, in order to achieve the mandated Mercury and PCB reductions in stormwater.

**Issue 18: Requiring local municipalities to implement PCB site control during demolition may not be effective**

The second pathway of achieving PCB reductions is through removal of PCBs during building demolitions. Achieving significant PCB reductions will rely on early and sustained opportunities during the next MRP permit term. However, permittees will have no control over timing of when properties redevelop. Furthermore, a program of this nature, with such widespread impacts, should be implemented by the State, in a manner similar to the asbestos abatement program.

Additionally, it is unclear how much benefit will be gained by containing PCB-laden dust during demolition. The County supports developing a state-wide program to abate dust during demolition of potentially PCB laden buildings, but County Watershed Staff are concerned there may not be enough opportunity or accountability to successfully remove significant levels of PCBs to assist in achieving mandated reductions.

**Issue 19: Implementation of the Green Infrastructure (GI) Plan will take longer to initiate than the interim and final timelines in the MRP 2.0**

The development of Green Infrastructure Plan will take at least the full permit term to complete. It is a monumental planning effort that will require a paradigm shift by cities and counties regarding roads and stormwater runoff from them. Many of unincorporated Contra Costa County communities developed during the 1945 to 1980 period that will be the focus of the GI Plan. Many of these communities are closely

intertwined with adjacent cities. This will require coordinated efforts with several cities, which only complicates the planning effort. Furthermore, many unincorporated communities lay within the hills or near the Delta/Bay margins, where drainage is particularly challenging to treat. Five years to develop a new plan to treat road run off may not be adequate.

**Issue 20: Untenable path to compliance for PCBs and Mercury**

Because of limited opportunities to abate potentially tainted sediment from entering local waterways, the limited capabilities to implement a program to abate caulk in demolished buildings, and the extraordinary challenges to plan and implement Green Infrastructure, Contra Costa County believes the numeric PCB and Mercury requirements outlined in MRP 2.0 are not feasible.

Considerable time and effort has been spent by both municipal and Water Board staff discussing how to reduce levels of Pollutants of Concern flowing into our waterways, particularly trash and PCBs. Failure to achieve the reductions specified in MRP 2.0 could result in Contra Costa County being held in noncompliance. However, as drafted, MRP 2.0 provides an untenable path for permittees to successfully comply.

The Contra Costa County appreciates the efforts by your staff to develop permit requirements that are implementable and effective in improving surface water quality—a goal which we share. The County is committed to working with the Water Board to achieve the water quality goals and requirement outlined in MRP 2.0. The County encourages Water Board staff to continue meet with Permittees to refine MRP 2.0 to meet our mutual goals to improve water quality within a time and financial framework that is feasible. We look forward to meeting with your staff to resolve of the remaining issues and to implementing MRP 2.0.

Sincerely,



Cece Sellgren  
Stormwater Manager  
Contra Costa County Watershed Program

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