



July 3, 2015

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

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

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

Dear Mr. Wolfe and Members of the Board:

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

For the past two years, representatives from Contra Costa municipalities, along with a consortium of Bay Area agencies and Bay Area Stormwater Management Agencies Association (BASMAA), have been engaged in an ongoing dialogue with your staff regarding: experience gained and lessons learned from the current MRP; how to apply that experience toward maximizing the effectiveness of MRP 2.0; and ensuring that the requirements contained in MRP 2.0 provide for a clear path to compliance.

This process generated many new ideas and approaches that build upon experience gained, and identified how to expand upon and enhance our stormwater pollution prevention efforts. It also advocated for consolidating or eliminating "less beneficial tasks" in the permit, extending implementation dates, reducing reporting, and adjusting ongoing tasks to reduce effort while maintaining effectiveness in protecting water quality.

This approach acknowledges the reality that new or additional funding sources required to implement the new and expanded requirements contained in MRP 2.0 have

yet to be identified, and advocates allocating limited resources in ways that would focus upon and maximize effectiveness of the major new and expanded mandates.

Despite the extensive effort, few of these ideas were carried forward into MRP 2.0. Therefore, the City of El Cerrito opposes MRP 2.0 as it is currently drafted, asks that your Board consider the following comments, and directs Water Board staff to work with permittees to revise the Tentative Order.

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

The draft Tentative Order includes a new mandate to develop Green Infrastructure Plans. This coordinated, multi-year effort represents a significant paradigm shift toward developing comprehensive long range plans that will significantly reduce the amounts of urban runoff pollutants, including the pollutants of concern, flowing into receiving waters. It will also require significant investment on the part of all permittees.

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

- Assess each planned infrastructure project and add Green Infrastructure features where feasible;
- Plan and implement a program to manage PCB-containing materials in commercial and industrial structures constructed or remodeled between 1950 and 1980 at the time those structures are demolished;
- Demonstrate trash load reductions of 70% from 2009 levels— up from the current 40% requirement—by installing full trash capture devices or implementing equivalent trash control measures and evaluating their effectiveness through visual surveys; and
- Require private property owners in high-trash and moderate-trash areas to install full trash capture devices or implement equivalent measures.

El Cerrito is also concerned with the challenge of generating the additional financial resources that would be required to meet the terms of many of the new provisions. Also, of particular concern are the C.3.j Green Infrastructure requirements. These could significantly impact how transportation infrastructure is built and maintained over the next several decades. The burden of these requirements must be balanced with the multiple other demands for use of limited public right-of-way in the built environment. Additionally, it should be more explicit that private development and redevelopment projects receive credit for meeting the Pollutants of Concern (POC) load reductions.

Given the high cost of green infrastructure, transportation needs, and the inevitable underground conflicts with other utilities in the public right-of-way, efforts during the MRP 2.0 term should focus on planning and opportunistic implementation where feasible.

The proposed GI Framework schedule with development and approval within one year is exceedingly aggressive considering its complexity. Prioritization and mapping of potential projects would be a major resource intensive effort that may require more than two years. The Early Implementation section does not provide a clear path to compliance. Because it affects long range planning it must be more defined and achievable in order to be realized. These major new mandates will require a significant, sustained effort to implement; however, absent any new or additional funding sources, most communities will be hard pressed to achieve compliance.

The attached table summarizes adjustments that have been presented to Water Board staff that would improve program efficiencies or eliminate certain less beneficial tasks. Comprehensive information and rationale has been presented to support these requests. Inclusion of these changes in the MRP 2.0 will allow permittees to focus and apply our limited resources to the major new and expanded mandates, in order to achieve the greatest positive impact.

All of the requested adjustments in the attached table would enable El Cerrito to more effectively use its limited resources to achieve the goals of the permit. In particular, the City would like to highlight the following:

- C.2.f. requiring additional Corporation Yard Inspections is duplicative of current requirements for inspections already included in the SWPPPs for these same facilities. Redundancy of requirements will divert limited staff resources from implementing other more pressing clean water mandates.
- C.3.b.i may adversely affect much needed development projects that were in stasis during the economic downturn such as Eden Senior Affordable Housing, 1715 Elm Residential Development and Creekside Walk with the removal of the grandfathering clause.
- C.9.c - All applicators already receive IPM training and sign the City's IPM policy contractor agreement. Increased pesticide application observation is redundant and burdensome.
- C.10.a.i.a - Since the rejection by the Water Board of all of the Permittee's Short Term Trash Load Reduction Plans and the Water Board changes to allowable trash load reduction credits, additional time and resources are needed to implement accepted trash load reduction methods.

- C.10.a.ii.b- A mapping requirement for private property lands plumbed to the MS4 is unduly resource intensive and should be eliminated. The City does not have an accurate inventory of storm drains on private lands. Rather, the same goals could be reached, and City resources would be more effectively used, by concentrating on the C.4 and C.5 provisions.
- C.10.e.i.- Our City is fortunate to have volunteer “Green Teams” that remove street litter quarterly in on-land clean-ups. These events should receive trash load reduction credit based on volume of collected trash.

Permittees Must Have a Clear Path to Compliance

Considerable time and effort has been spent discussing how to reduce levels of pollutants of concern flowing into our waterways, particularly PCBs. Failure to achieve the reductions specified in MRP 2.0 could result in our City being held in noncompliance and vulnerable to lawsuits. However, as drafted, MRP 2.0 provides no clear path for permittees to avoid noncompliance. Some examples include:

- The draft Tentative Order mandates achieving specified reductions in the total quantity of PCBs discharged from municipal storm drains. A major means of achieving these reductions is through removal of PCBs during building demolitions. However this fails to acknowledge that permittees have no control over timing of when properties redevelop. *We ask that development of a program to control PCBs during building demolitions, rather than applying controls to a specified number of buildings demolished, should represent compliance with this requirement.*
- The Tentative Order includes (in the Fact Sheet) an incomplete method to achieve stipulated reduction credits for each building demolished with PCB controls, for each redeveloped site with new bioretention facilities, and for finding and abating concentrated sources of PCBs. Looking for hidden PCB sources is a good idea, but permittees can't guarantee that they will find them and be able to abate them. *We ask that development of a program to systematically identify and review potential sources, and refer them to appropriate agencies for abatement, be the basis for credit toward compliance.*
- The draft Tentative Order allows only four (4) months after Permit adoption for permittees to submit a more complete “measurement and estimation methodology and rationale” for stipulating PCB reduction credits. *We ask that BASMAA's PCBs programs accounting methodology be finalized, incorporated into the permit, and then used to calculate PCBs load reductions during permittee annual reporting.*

- Water Board staff has stated the threat of noncompliance is intended to strongly encourage permittees to find and abate hidden PCBs, and that Water Board staff would use “enforcement discretion” if and when permittees are unable to meet the mandated PCB load reductions. From a municipal government perspective, new financial and staffing commitments must be based on agreed upon goals and objectives, and have well-defined metrics for measuring progress. *We ask that the load reduction performance criteria not be the point of compliance, and that Water Board staff work with permittee representatives to revise the Draft Tentative Order so that it provides a clear and feasible pathway for permittees to attain compliance. Most factors that are key to meeting the load reduction performance criteria are uncertain and many are not within permittee control (e.g., extent of source properties that will be found, building demolition rates, and redevelopment rates), making achievement of compliance uncertain.*

The City of El Cerrito appreciates the efforts by your staff to develop permit requirements that are implementable and effective in improving surface water quality – a goal which we share. We look forward to resolution of the remaining issues and to implementing MRP 2.0.

Sincerely,

City of El Cerrito



Scott Hanin
City Manager

Attachment : Requested Adjustments to Improve Efficiency in the Municipal Regional Permit, Including Elimination of “Less Beneficial Tasks”

Requested Adjustments to Improve Efficiency in the Municipal Regional Permit, Including Elimination of “Less Beneficial Tasks”

Provision	Task or Requirement	Requested Adjustments
C.2.f.	Corporation Yard inspection requirements.	Eliminate this requirement, as it duplicates the requirements for inspections already included in the Stormwater Pollution Prevention Plans (SWPPPs) for these same facilities.
C.3.b.i.	Eliminates grandfathering of Regulated Projects with vested tentative maps approved prior to advent of C.3 requirements	Allow municipalities flexibility to require these applicants to implement stormwater treatment requirements only to the extent not in conflict with state law and existing development agreements
C.3.b.ii.(4)	Certain Roads Projects are Regulated Projects under Provision C.3	Delete this requirement as the intent is superseded by the Green Infrastructure requirements in Provision C.3.j.
C.3.b.ii.(1)(c)	Requires projects where 50% or more of existing impervious area is redeveloped to provide treatment for entire area.	Delete this requirement as the intent is superseded by the Green Infrastructure requirements in Provision C.3.j.
C.3.e.ii.	Special Projects—allowance to use non-LID treatment on smart growth development projects that meet specified location and gross density criteria.	To avoid a disincentive for including pedestrian amenities, allow public plazas to be omitted from calculation of project gross density.
C.3.e.v.(1)	Requires Permittees to track Special Projects that have been identified (application submitted) but not approved.	Delete this requirement, as the number of projects, and amount of impervious area, has proven to be small.
C.3.e.v.(2)	Requires Permittees to conduct and document an analysis of the feasibility of LID treatment for Special Projects.	Delete this requirement, as it creates considerable additional effort for applicants and Permittees without any expected water-quality benefit.
C.3.g.vii.	Requires Contra Costa municipalities (through CCCWP) to submit a technical report describing how Contra Costa will implement current Permit hydromodification management requirements.	Delete requirement to submit a technical report. CCCWP submitted a 2013 report on the results of a multi-year monitoring study that concluded current policies and criteria meet these requirements.
C.3.g.iv.	Allows Permittees to propose a different method for sizing hydromodification management facilities that is not biased against Low Impact Development, but requires a Permit amendment before using the method.	Delete requirement for a Permit amendment before the method is used. Note: the Fact Sheet accompanying the Tentative Order states that Water Board Executive Officer approval would be required, not a Permit amendment.
C.3.h.ii.(6)(b)	Requires Permittees to inspect 20% of Regulated	Delete the annual requirement to allow flexibility in scheduling

Provision	Task or Requirement	Requested Adjustments
and (c)	Projects annually, as well as every project at least once every 5 years.	inspections.
C.3.j.i.(1)	Requires each Permittee to prepare and implement a Green Infrastructure Plan (framework for Plan due in 12 months; Plan due in 2019)	Extend the time for submittal of the required framework to a minimum of 20 months.
C.4, C.5, C.6	For inspections of businesses and construction sites, and for response to illicit discharges, requires that corrective actions of “actual or potential non-stormwater discharges” be implemented before the next rain event, but no longer than 10 business days after potential or actual non-stormwater discharges are discovered.	Delete references that specify types of corrective actions and timeframes for implementation, as these create a disincentive for identifying minor problems and create unproductive administrative work.
C.5.e.iii.	Requires Permittees to report a list of mobile cleaners operating in their jurisdiction.	Delete, as this information is unavailable.
C.5.e.iii.	Requires Permittees to report a list and summary of specific outreach events and education conducted to the different types of mobile businesses	Delete and clarify that requirements to inspect mobile businesses and abate discharges is covered by existing requirements elsewhere in Provisions C.4 and C.5.
C.7.a.	Permittees are required to mark and maintain “no dumping” markings on storm drain inlets.	Move this task to Provision C.2.
C.7.b.	Requires Permittees to participate in or contribute to “advertising” campaigns on specified subjects and assess results.	Change “advertising” to “outreach” to make explicit that a variety of methods, including social media, may be used. Delete references to specific subjects. Allow more flexibility.
C.9.c.	Requires Permittees to observe pesticide applications by their contractors.	Delete requirement.
C.10.a.i.a.	Requires Permittees to achieve a 70% load reduction by July 1, 2017	Extend this compliance date to 2018.
C.10.a.ii.b.	Requires Permittees to ensure private properties plumbed directly to municipal storm drains are equipped with full trash capture devices or to verify “low” trash generation rate. Requires Permittees to investigate and map these properties.	Delete the mapping requirement and integrate inspections and enforcement into Provision C.4 (Commercial and Industrial Inspections).
C.10.b.1.a.	Specifies maintenance frequencies for full trash capture devices based on trash generation rates.	Set minimum frequency of 1x/year for all devices, to be adjusted based on maintenance experience. Required maintenance frequency

Provision	Task or Requirement	Requested Adjustments
		is determined mostly by amount of leaf litter and type of device.
C.10.b.1.c.	Requires Permittees to certify that full trash capture systems are maintained to meet standard.	State that systems are maintained, and maintenance program is designed to meet standard.
C.10.b.iv.	Allows a credit of up to 5% toward trash reduction requirement for source control actions such as product bans.	Increase maximum to 20% to fully credit existing product bans and to create incentive for future source control actions.
C.10.e.i.	Creates a formula for crediting trash collected during additional creek and shoreline cleanups toward trash reduction requirement—at a 1:10 ratio, with a 5% maximum credit.	Make the ratio 1:3 and increase maximum credit to 10%.
C.10.e.	Credits on-land cleanups and litter reduction only if visual assessments show a categorical change (e.g., from “very high” to “high” trash)	Allow interim credit for demonstrated actions intended to achieve categorical change.
C.10.a.iii.	Requires bioretention facilities to be equipped with a screen to qualify as full-trash-capture facilities.	Specify that these facilities qualify as full trash capture. Screens could cause flooding.
C.10.b.iv.	Requires observations of creeks and shorelines to determine whether trash control actions have prevented trash from discharging to receiving waters.	Restate purpose of observations, as it is not possible to determine that trash originated from storm drains.
C.10.e.ii.	Provides 1:10 ratio up to 10% maximum credit for actions to reduce direct discharge of trash (e.g. dumping, encampments).	Increase ratio to 1:3, with no maximum, as in some locations this is the predominant source of trash.
C.10.f.ii.	Produce an updated trash generation map each year.	Tie updated maps to compliance dates (for 70% and 100%).