LIVERMORE
CALIFORNIA

CALIFORNIA REGIONAL WATER
JUL 07 2015
QUALITY CONTROL BOARD

July 1, 2015

Mr. Bruce Wolfe, Executive Officer
California Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay Street, Suite 500
Oakland, CA 94612

Subject: Comments on Municipal Regional Stormwater 2.0 NPDES Permit Tentative Order/ NPDES PERMIT NO. CAS612008

Dear Mr. Wolfe:

The City of Livermore is filing these comments with regard to the Municipal Regional Stormwater 2.0 NPDES Permit for Dischargers from Municipal Phase I Permittees in the San Francisco Bay Region Tentative Order issued on May 11, 2015. We request that you include our comments in the record of this administrative proceeding.

In general, the Tentative Order for the Municipal Regional Stormwater Permit 2.0 includes a great deal of new and/or significantly enhanced requirements that will result in a substantial expenditure of public resources. The City believes many of these requirements, C.3 .j. "Green Infrastructure Planning and Implementation and the C.10 Trash Load Reduction", in particular, may be challenged as unfunded mandates. Specifically, the City of Livermore has the following comments regarding the Municipal Regional Stormwater 2.0 NPDES Permit Tentative Order:

1. **C.3.b.i. Regulated Projects**: This provision requires any regulated project that was approved "pre-C.3" and has not begun construction to comply with the Low Impact Development requirements. The City has serious concerns surrounding its legal authority to impose new requirements on existing entitled projects; and thus, would not be able to legally comply with this permit requirement. As this requirement would only apply to a significantly small number of projects while creating many legal issues and potential litigation, the City encourages the Board to delete this requirement.

2. **C.3.h. Operation and Maintenance of Stormwater Treatment Systems**: Provision C.3.h.ii.6 requires the tracking and inspection of all pervious pavement systems that total 3000 square feet or more. This as an unnecessarily burdensome requirement to track and inspect this one specific stormwater treatment measure. The existing permit, as well as the Tentative Order for MRP 2.0, already requires permittees to develop and implement a comprehensive Operation and Maintenance program to inspect Stormwater Treatment Measures. Provision C.3.h.ii.6 should therefore, be deleted.

3. **C.3.j. Green Infrastructure Planning and Implementation:** This provision requires Permittees to *"complete and implement a Green Infrastructure Plan for the inclusion of low impact development drainage design into storm drain infrastructure on public and private lands, including streets, roads, storm drains, parking lots, building roofs, and other storm drain infrastructure elements…the plan is intended to describe how the Permittees will shift their impervious surfaces and storm drain infrastructure from gray, or traditional storm drain infrastructure where runoff flows directly into the storm drain and then the receiving water to green—that is, to a more resilient, sustainable system that slow runoff by dispersing it to vegetated areas, harvest and uses runoff, promotes infiltration and evapotranspiration, and uses bioretention and other green infrastructure practices to clean stormwater runoff."* In general, the City believes this provision, as currently drafted, is seriously flawed, fails to consider all of the associated financial costs to municipalities, fails to recognize the funding limitations and constraints faced by municipalities, and goes well beyond the scope of "maximum extent practicable" creating an unfunded mandate.

   Provision C.3.j.i.(1)(a) requires *"Permittees to prepare a framework for development of its Green Infrastructure Plan and have the framework approved by the Permittee's governing body, mayor, city manager or county manager within 12 months of the Permit effective date*." This task will be an extensive, resource-intensive effort, which cannot be achieved in such a short timeframe. The schedule for completion should be extended to 36 months at a minimum.

   Provision C.3.j.i(1)(c) requires Permittees to establish *"Targets for the amount of impervious surface within the Permittees jurisdiction to be retrofitted over the following time schedules: (i) Within 2 years of the Permit effective date; (ii) Within 7 years of the Permit effective date (5-year horizon); (iii) Within 12 years of the Permit effective date (10-Year horizon); (iv) Within 27 years of the Permit effective date (25-Year Horizon); and (v) Within 52 years of the Permit effective date (50-year horizon)."* This section of the draft Tentative Order should be revised to allow for the development of "projections" rather than "targets" and allow Permittees to include projected private development as well as public projects. It should also be revised to allow the "projections" to be developed for the years 2020, 2030, 2040, and 2065 to be consistent with the timeframes contained in Provisions C.11 and C.12.

4. **C.10 Trash Load Reductions**: This provision requires Permittees *"to demonstrate compliance with Discharge Prohibition A.2 and trash-related Receiving Water Limitations through the timely implementation of control measures and other actions to reduce trash loads from municipal separate storm sewer systems in accordance with the requirements of this provision…..Permittee shall reduce trash discharges from 2009 levels…to receiving waters in accordance with the following schedule: (a) 70 percent by July, 2017; and (b) 100% or no adverse impact to receiving waters from trash by July 1, 2022"*. While the permit does not specifically require Permittees to install trash capture devices as the sole prescribed means to meet these trash reduction objectives, it has become quite clear over the term of the existing MRP that the only undebatable way for Permittee's to demonstrate compliance with

this provision to the San Francisco Bay Regional Water Quality Board will be to install full trash capture devices. While the City of Livermore and fellow members of the Alameda Countywide Cleanwater Program have made considerable progress in meeting the trash reduction objectives specified in the MRP, the schedule for meeting the 70% and 100% trash reduction goals needs to be extended. At a minimum, the City encourages the Board to revise this provision to be in alignment with the time tables established in the State Water Board's Trash Amendments to the Water Quality Control Plan for Ocean Waters of California that were proposed for consideration and adoption April 7, 2015. In doing so, Permittees would have 10 years from the effective date of the permit to install trash capture devices to comply with this provision. Alignment of this provision with the State Water Board's Ocean Plan would not only allow a reasonable time period for municipalities to plan and secure funding for the capital improvement projects necessary to demonstrate compliance, it would establish a fair and uniform regulatory environment in regards to Trash for all municipalities throughout the State. Additionally, the City has the following comments on specific sections of the C.10 Trash Load Reduction Provision:

Provision C.10.a.ii.b, Trash Generation Area Management, states that *"Permittees shall ensure that lands that they do not own or operate but that are plumbed directly to their storm drains systems in Very High, High, and Moderated trash generation areas are equipped with full trash capture systems or are managed with trash discharge control actions equivalent or better than full trash capture systems…Permittees shall map all such lands greater than 5000 ft2 that are plumbed directly to their storm drain systems by 2018…"* This mapping requirement would require a tremendous effort with no clear water quality related benefit, and therefore, the City encourages the Board to delete it from the Tentative Order.

Provision C.10.b.iv, Source Control, establishes a 5% maximum reduction for all jurisdiction- wide actions (i.e. polystyrene foam bans and plastic bag bans). The maximum credit allowed for source control actions should be expanded. The Alameda Countywide Storm Drain Trash Monitoring and Characterization Project conducted under the MRP demonstrated an 8% reduction from such existing actions.

Provision C.10.e.i, Optional Trash Load Reduction Offset Opportunities, states that *"A Permittee may claim a load reduction offset of one percent for each total of trash volume removed from additional cleanups that is ten percent of the Permittee's 2009 trash load volume estimates, based on its trash generation maps and average categorical trash generation rates, in accordance with the following formula…"* The City of Livermore, along with many other municipalities expends a significant amount of resources to clean up trash around local creeks. These endeavors are often the most effective approach to reducing trash that is having a direct impact on local waterways. The Board should encourage and promote

such activities; not discourage them. Unfortunately, in these situations, the MRP forces municipalities to direct their limited resources to those activities which equate to permit compliance as opposed to those activities that have a positive benefit upon water quality. Taking the approach to arbitrarily place a cap on the maximum offset for such efforts will result in municipalities limiting or ceasing efforts such as Livermore's Adopt A Creek Spot Program, which are of great benefit to its local waterways, all together. If the Board is to place a cap on the maximum offset for these types of activities at all, it should, at a minimum, be increased to 15 percent.

The City of Livermore would like to thank the Board for the opportunity to provide these comments on the Municipal Regional Stormwater 2.0 NPDES Permit for Dischargers from Municipal Phase I Permittees in the San Francisco Bay Region Tentative Order issued on May 11, 2015. We appreciate your attention to these comments and we look forward to a renewed dialogue with Board staff as we progress through this permit adoption process. Please contact Steven Aguiar, Environmental Compliance Supervisor, at 925-960-8126 for further discussion of these comments.

Sincerely,

Darren Greenwood
Public Works Director
City of Livermore, Public Works Department
(925) 960-8003

cc: Helen Ling, Acting Water Resources Division Manager, City of Livermore
Stephan Kiefer, Community Development Director, City of Livermore
Cheri Sheets, City Engineer, City of Livermore