

# CITY OF SAN CARLOS

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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: Comments on the Tentative Order for the Reissued NPDES Stormwater Municipal Regional Permit**

Dear Mr. Wolfe:

The City of San Carlos 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.

In general, the new permit adds significantly to the City's cost of compliance from the last permit, and so those costs will have to be found within the City's budget, displacing other important city priorities.

Please note that this letter focuses on our highest priority areas of concern, which are Provisions C.3 (New Development and Redevelopment, especially the Green Infrastructure provision), C.10 (Trash Load Reduction), and C.12 (PCBs Controls). Of particular concern is that Provision C.12 (PCBs Controls) continues to fall well short of providing the City with a clear and feasible pathway to attaining compliance. Please see the below sections for more details.

For detailed comments on other sections of the permit, please refer to the comment letter submitted separately by the San Mateo Countywide Clean Water Program (SMCWPPP). We concur with and support all of SMCWPPP's comments and incorporate them here by reference.

### **C.3 - NEW DEVELOPMENT AND REDEVELOPMENT**

- **Issue:** Developing a comprehensive Green Infrastructure (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:** 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 below<sup>1</sup>) that would allow for consistent review of capital projects for GI opportunities, based on specified criteria.

## C.10 - TRASH LOAD REDUCTION

- **Issue:** Reductions become increasingly more challenging the closer Permittees move towards the trash reduction goal of “no adverse impacts”. Provision C.10.a.i 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, with additional consideration given to extending the 2022 date for 100% trash load reduction as well.

- **Issue:** Throughout the Bay Area thousands 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
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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 the maintenance and flooding if retrofitted with screens. The Water Board to reconcile this issue. The requirements for the sizing and design of green infrastructure facilities are now well established. Requiring modifications to these designs for trash just doesn't make sense. The 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 installed and maintained consistent with provision C.3 and in the Permit deem that these facilities are equivalent to full capture systems.

## **C.12 - PCBs CONTROLS**

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 have prevented 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 of landscape-based treatment structures (e.g., "Green Streets") into the public right-of-way 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 such Green Infrastructure into the urban landscape has been incorporated into the Tentative Order, but implementation will mostly occur during future permit terms and require several decades.

Additionally, although highly uncertain, there may be opportunities 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. Our 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 upfront and incorporated into the permit.

#### **C.12.f. Manage PCB-containing Materials and Wastes during Building Demolition**

- **Issue:** The various potential problems associated with PCBs in building materials (i.e., water quality, human exposure at the site, and disposal) 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.  
**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.

We look forward to continuing to work with you and your staff to resolve the issues described in this letter. Please contact Jay Walter, Public Works Director, if you have any questions or would like to further discuss any of our comments.

Sincerely,



Ron Collins

Mayor, City of San Carlos