CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Environmental Services Department
WATERSHED PROTECTION

July 10, 2015

Bruce Wolfe
Executive Officer
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

Subject: **City of San Jose Comments on the Municipal Regional Stormwater Permit Tentative Order dated May 11, 2015**

Dear Mr. Wolfe,

Thank you for the opportunity to comment on the Municipal Regional Stormwater Permit Tentative Order dated May 11, 2015.

The City of San Jose is the tenth largest city in the United States, third largest in California, and the largest in the Bay Area, with a land area of 180 square miles and an estimated population of over 1 million. The City has approximately 31,000 storm drain inlets, 1,100 miles of storm drain lines, and 1,500 outfalls throughout its urban service area. The City has had a proactive stormwater management program in place since the first countywide municipal stormwater permit was adopted in 1990. The City has actively been engaged in the development of the Municipal Regional Stormwater Permit Tentative Order, along with other MRP copermittees and Water Board staff.

The City's key concerns and issues with the Tentative Order are summarized in this letter and detailed comments are provided in Attachment A. The City's most significant concerns are with Provisions C.2. Municipal Operations, C.3 (New Development and Redevelopment), C.10 (Trash Load Reduction), and C.11/ C.12 (PCBs Controls/ Mercury Controls), and are highlighted below.

Municipal Operations (Provision C.2)

Stormwater Pump Stations

Although the Water Board expressed its intent in the summary of Proposed Major Changes to the Tentative Order to delete prescriptive requirements for pump station monitoring, and delete reporting requirements, the new language is not possible to comply with without even more intensive monitoring of pump station discharges. Specifically, the language reads: "Implement corrective actions, such as continuous pumping at a low flow rate, aeration, or other appropriate methods to maintain dissolved oxygen (DO) concentrations of the discharge above 3 milligrams per liter (mg/L) ***at all times*** (emphasis added)." Previously, pump station monitoring was only required twice during the dry season. Although the Water Board has stated its intent to remove prescriptive monitoring requirements, there is no way to demonstrate that discharges meet these parameters "at all times" without intensive, expensive, and sometimes unreliable continuous DO monitoring. Moreover, monitoring pump station discharges in the wet season can be unsafe.

Requested Revision: Remove provision C.2.d.ii(1)

New and Redevelopment (Provision C.3)

LID Site Design

The City is concerned with the Tentative Order requirement that any regulated projects approved before any C.3 requirements were in effect (prior to 2003) and have not yet begun construction by the effective date of MRP 2.0, comply with the Low Impact Development (LID) treatment and sizing requirements of MRP 2.0. The Tentative Order eliminates the ability of Permitees to grandfather older development projects, which was previously allowed in MRP 1.0. This represents a legal challenge because it would require the City to impose new requirements on previously entitled development projects.

Applying new LID requirements to un-built or longer-term phased projects already approved under previous permit conditions is not possible. Approved building permits are ministerial acts which grant entitlements to the developer and thus restrict the ability of the City to impose any new requirements from that point forward. The phrase "has not begun construction" is ambiguous and, therefore, presents significant implications in the City's ability to comply. The requirement needs to align with the City's legal ability to impose changes in the project design.

Implementing this Tentative Order requirement would also have the following unfavorable impacts on the City:

- Cost of potential litigation brought by a developer that has received a building permit for a phase of development, that has effectively effectuated the project and requires no additional discretionary review;
- Significant cost to developers to retrofit projects to include stormwater control measures; and
- Time, cost, and training to implement a new process to ensure appropriate measures are in place per the grandfathering cause.

Requested Revision: Remove this requirement and allow un-built projects remain subject to LID treatment and sizing requirements that were in place at the time when the project was approved by the City.

Gross Density

The Tentative Order adds a definition for "gross density" that conflicts with how the City has been calculating density credits for Special Projects and conflicts with past Water Board guidance on right-of-way and roadway projects. The definition includes right-of-ways and civic areas. This is inconsistent with the City's current density credit calculation methodology, which excludes these areas. The Tentative Order approach would result in fewer credits for projects with these features and prevent some valuable high density projects from qualifying for LID treatment reduction credits. Special Projects align with Smart Growth concepts and provide holistic environmental benefits (stormwater quality, green-house gas emissions, and air quality) by reducing urban sprawl through high-density redevelopment, locating within walking/biking distance to public transit, and creating less "accessory" impervious areas associated with automobile-related uses. In order to achieve the goals of smart growth, Special Projects often must enhance infrastructure such as public right-of-

ways, public parks and recreational areas, and pedestrian access through public plazas. Incorporation of these elements into the Gross Density definition will discourage projects from incorporating them into designs.

Additionally, right-of-ways and civic areas are currently captured under the stormwater treatment requirements for roadway projects. Adding these areas into the density credit calculation would result in "double-counting."

Requested Revision: Use Net Density to calculate Special Project density credits, or change the definitions of Floor Area Ratio (FAR) and Gross Density such that they only include areas within the project boundary, and exclude public plazas, civic areas, and public right-of -ways.

Operation and Maintenance of Stormwater Treatment Systems

Section C.3.h.ii (7) c requires that corrective actions for identified O&M problems with pervious pavement, treatment, and hydomodification systems be implemented within 30 days. The City's O&M Inspection Program developed an Enforcement Response Plan (ERP) that has been effectively implemented for just over one year (prior to permit requirement). The City's ERP allows 90 days for corrective actions to be implemented, and more than 90 days for corrective actions when a site is actively working to resolve the issue. The new Tentative Order requirement for corrective actions to be implemented in 30 days does not allow enough time for identification of, communication with, and education of the property owner/operator. C.3 facilities are unique in that in the majority of cases responsibility is transferred several times before final ownership. For example, the developer transfers to property owner, the property owner transfers to homeowners association, and the homeowners association contracts with a third-party maintenance company. Knowledge and understanding of C.3 treatment facilities and responsibilities to maintain are often not effectively conveyed throughout each transfer of ownership. This results in a longer process of identifying, contacting, and educating the property owner, allowing the property owner to arrange for maintenance work to be completed, and following up with a re-inspection, all of which typically takes more than 30 days.

Requested Revision: Extend the proposed timeline for initial corrective actions from 30 days to 90 days and retain language allowing for more time when necessary and when actively working to resolve issues.

Green Infrastructure Planning and Implementation

The Tentative Order includes an increased emphasis on Green Infrastructure and requires Permittees to develop a Green Infrastructure Plan for incorporating low impact development drainage design into storm drain infrastructure on public and private lands. While the City supports the move to a holistic planning approach for green infrastructure and is already moving forward on a number of related efforts (e.g., Storm Sewer Master Plan), the City has concerns regarding the deadlines, level of effort, and potential costs associated with development and implementation of a Green Infrastructure Plan for the City.

The City requests that the Water Board reevaluate the timelines and make them more realistic and achievable. For example, the Tentative Order requires permittees to develop and obtain governing

body approval of a framework within 12 months of the permit effective date. Given the size and complexity of the City and the extent of interdepartmental coordination required to develop a framework, the 12 month timeline is too short.

Requested Revision: Allow at least 18 months for permittees to complete these tasks and to require permittees to submit the framework no earlier than the second Annual Report due under the permit. Also, allow the full permit term for permittees to develop Green Infrastructure Plans and focus on implementation of the plans in the following permit.

The City is uncomfortable with the Tentative Order requirement for Green Infrastructure Plans to include targets for the amount of impervious surface in the City to be retrofitted within 2, 7, 12, 27, 52 years of the permit effective date. It is unclear what level of project implementation is required, and what the Water Board considers a compliant amount of retrofitted impervious surface.

Requested Revision: Align the milestone dates with the milestone dates in provisions C.11 and C.12.

Trash Load Reduction (Provision C.10)

The City has actively implemented trash management controls over the past 5 years and will continue implement strategies included in its Long-Term Trash Load Reduction Plan to achieve permit required trash load reduction goals. Significant elements of the City's trash reduction efforts include a vast array of strategies such as large trash capture devices, source control measures, active creek and shoreline cleanups, and robust programs to address direct discharge of trash into creeks.

Source Controls

The City appreciates that the Water Board included language in the Tentative Order to allow source control actions such as single use plastic bag bans and expanded polystyrene ordinances to be valued toward trash load reduction, and acknowledging the importance of these actions in reducing or eliminating the distribution of litter prone items. According to the BASMAA trash generation study, single-use plastic grocery bags and foam foodware comprises a substantial percentage by volume of trash and debris in stormdrains. Implementing both the Single-Use Carry-Out Bag and Foam Food Container Ordinances required significant investments of public resources. Observed results have proven the investment worthwhile in reducing these uniquely problematic and persistent kinds of litter prone items. Notably, since the inception of the ban on single use carryout bags in January 2012, the City has observed an estimated 71% reduction in plastic bags in creeks through trash characterization conducted at City hotspots. The City is disappointed, however, that the Tentative Order sets a cap of 5% for all source control actions combined. Establishing such a low cap significantly undervalues the direct impact of these actions on stormwater quality and the effort required to affect such a change.

Requested Revision: Revise the Tentative Order to increase the maximum for all source controls combined to at least 15%.

Direct Discharge Trash Control – Trash Load Reduction Offset Opportunities

The City is equally appreciative that the Tentative Order provides an option for trash load reduction offsets for direct discharge trash controls, however, the load reduction cap of 10% is simply too low. The City of San Jose is the 10th largest City in the United States and has one of the largest homeless populations in the nation. The City's 130 miles of natural creeks in close proximity to urban areas make these riparian corridors attractive locations for homeless encampments. Homeless encampments generate substantial amounts of trash and are sources of direct discharges to creeks. The City has invested millions of dollars in developing a comprehensive Homeless Response Program to address homeless encampments throughout the City and improve water quality. Through the City's work, in partnership with the Santa Clara Valley Water District, more than 1,200 tons of trash was removed from encampments established along the creeks in 2014. The City has also enhanced its strategies to implement more physical deterrents and enforcement presence/actions when appropriate. The City spent almost $4 million dollars last year, with the program funded next fiscal year.

The Water Board has expressed supportive interest in local efforts to clean up direct discharges, including those from homeless encampments. The Water Board's support acknowledges that trash sources are not solely from the municipal separate storm sewer system (MS4) and that a balanced and prioritized approach to also manage direct discharge sources can, for justifiably select jurisdictions, provide equal if not greater water quality benefit than a strategy that simply focuses on one source (i.e., MS4). The City concurs that the permit should include trash reduction credit for the portion of trash removed from sources of direct discharges, including homeless encampments. However, the maximum trash reduction offset should be more commensurate with the water quality benefit demonstrated by the relative amount of trash removed through an established and robust program.

Requested Revision: Increase the maximum offset for programs addressing direct discharges to at least 25%, and allow for post-2016 submittal of plans to control direct discharges that justify a requested offset percentage. These changes would better recognize the value of and more closely equate to the water quality benefits of direct discharge trash control programs.

Creek and Shoreline Cleanups Offsets

The City views Creek and Shoreline Cleanups as important trash reduction activities that promote community involvement, create awareness of trash issues, and improve water quality. The City has been engaged in and has supported a variety of community creek cleanups including National River Cleanup Day, Coastal Cleanup Day, and the Great American Litter Pick up. Beyond that, the City has provided in-kind support to community groups dedicated to ongoing creek cleanup efforts, such as the Keep Coyote Creek Beautiful and Friends of Los Gatos Creeks. Last year, these two groups alone removed 53 tons of trash from local waterways.

The requirement for a minimum cleanup frequency of twice per year at each site is too constraining. The City and community groups may choose to cleanup more sites once per year, rather than fewer twice per year. The point is to remove trash from creek and shorelines, not how many times it is removed at a specific site. Allow permittees the flexibility to determine how to most effectively direct limited resources.

Requested Revision: For reasons similar to those noted in the section above, the City requests that the Water Board increase the maximum offset for creek and shoreline cleanups to at least 10, and remove the requirement for a site to be cleaned at least twice per year before claiming an offset.

Trash Reduction Requirement Schedule

The Tentative Order contains the existing compliance target of 70% by July 2017. Trash reductions become increasingly more challenging as we move toward the goal of "no adverse impacts." For example, as the City seeks to install additional HDS units, siting and construction becomes more complex, involving more work with utilities and more difficulty ensuring the catchment areas align with high and moderate trash generation areas. As currently written, the Tentative Order reduces the amount of reduction value that the City may claim toward overall trash reduction progress for source control and direct discharge programs, making these compliance milestones increasingly challenging.

Requested Revision: Extend the next regulatory milestone date from July 2017 to at least July 2018.

Trash Generation Management (Private Drainage Area)

The City is concerned regarding the requirement to map and assess all private drainages 5,000 square feet or greater (in very high, high, and moderately high trash generation areas), determine the level of trash present in these areas, and ensure that no further action are needed. The mapping effort alone would be a significant undertaking and does not appear to provide any net trash reduction benefit. Furthermore, it is unlikely that the scale of effort prescribed will be achievable in the required timeframe. The City's IND program already covers many significant industrial sites with large drainage areas and works with property owners to address trash management issues that are observed.

Requested Revision: Remove this requirement.

Maintenance of Full-Trash Capture Systems

Finally, the City is concerned about the prescribed maintenance frequencies for full trash capture devices. They are not cost effective and it is unlikely that the scale of effort prescribed will be achievable given the cost. Rainfall levels and site specific conditions, such as urban canopy, would impact the necessary maintenance frequencies. The Tentative Order requires an increase in maintenance frequency if a full capture device is plugged or full of trash. It is important to note that full capture devices may plug for reasons, such as unusual debris types entering the storm system, that are one time occurrences and not maintenance frequency dependent. It may not be operationally effective to change maintenance frequency without analysis of the event circumstances. The proposed maintenance frequencies are not cost effective and it is unlikely that the scale of effort prescribed will be achievable given the cost.

Tailoring maintenance programs to maintenance needs of specific devices is a better way to ensure adequate maintenance of these devices into the future.

Requested Revision: Allow permittees to develop and implement permitee-specific maintenance programs to achieve and maintain full capture criteria.

PCBs and Mercury Controls (Provisions C.11 & C.12)

The City understands that the current Bay-wide TMDL load reduction requirement for stormwater is 90%. Current proposed control measures include, but are not limited to: additional street sweeping, inlet cleaning, suspect business referral to the Water Board, and ordinances to control the release of PCBs from demolition and renovation activities.

PCBs-Containing Building Materials and Wastes During Building Demolition

The Tentative Order's three year timeframe to develop a program to manage PCBs in building materials and wastes during demolition of applicable structures would likely require administration at the local level. The City is very concerned that this approach represents an inefficient use of public funds and an ineffective means to comprehensively address the problem. It would also likely result in inconsistent programs across the Bay Area. The City strongly believes that managing PCBs in demolition projects should be addressed on a statewide or federal basis, consistent with similar programs (e.g., lead-based paint, asbestos).

Requested Revision: Allow, at a minimum, the entire permit term for permittees to work with the State, USEPA, building industry, and other stakeholders to develop a comprehensive statewide or federal program analogous to current programs for asbestos and lead paint.

MRP Load Reduction Performance Criteria

Load Reduction Performance Criteria in Table 12.1 of the Tentative Order are based on an assumption that PCBs loads are related to population, not the actual availability of controllable sources of PCBs. The City is also very concerned that the Tentative Order requires implementation of sufficient control measures to achieve county-specific load reduction performance criteria shown in Table 12.1. It then contradicts this by saying that all permittees will be in compliance with the load reduction performance criteria as long as the total load reductions for the entire area covered by this permit are achieved. Moreover, uncertainties and assumptions in the accounting methodology in the fact sheet do not allow for a clear path to compliance.

Stormwater PCBs loads and required reductions were originally assigned based on population. Through study during the previous permit term, PCBs are distributed according to land use factors not necessarily associated with population. However, the Tentative Order load reduction requirements are still based on population. Moreover, it is unclear that the prescribed load reductions are achievable in the timeframe set forth in the administrative draft. The Water Board must establish a clear path to compliance that provides meaningful and achievable reduction of PCBs loads to the Bay during the permit term, and to address shortcomings in the original loading estimates and allocations.

The City is concerned about the Tentative Order requirements to plan and implement green infrastructure to reduce PCBs loads. Although green infrastructure projects are currently underway in San José, it is unclear whether additional projects can be funded and sited appropriately to achieve reduction goals

Requested Revision: Remove language creating County-specific load reduction criteria and revise language to state that permittees will be in compliance based on the stipulated load reduction benefits of proposed control measures, and acknowledge the possibility of stipulating further benefits from activities not listed in the fact sheet.

General Comments

Several provisions of the Tentative Order require the City to make a mid-year change, assuming an effective date of December 1, 2015, to the way we currently collect and/or track data. For example, C.3.h.v requires tracking of inspections by the number of sites as opposed to the current practice of tracking by the number of treatment facilities. Such modifications will make it challenging for the City to plan and conduct inspections during already initiated FY 15-16. It will also be difficult to report on data tracked one way, under current MRP requirements, for the first half of the fiscal year and tracked another way, under MRP 2.0 requirements, for the second half of the fiscal year. Some data tracking changes will require lead time for staff training, tracking tool development, and database programming prior to implementation. The City requests that the Tentative Order establish an effective date of July 1, 2016 for all such tracking requirement changes with an associated first reporting of the newly required data in the 2017 Annual Report. This will allow six months following permit approval for implementation and eliminate the need to change tracking methods mid-year.

Conclusion

The City remains an active steward of the environment, local creeks, and the San Francisco Bay, and acknowledges the time and effort of Water Board Staff invested in the development of the Tentative Order. We appreciate your consideration of our comments and look forward to engaging in the next steps to produce a successful MRP 2.0.

FOR KERRIE ROMANOW
Director, Environmental Service

Attachment A: City of San Jose – Detailed Comments on Tentative Order

Attachment A: City of San Jose Detailed Comments on the Municipal Regional Permit Tentative Order

Master Provision #	Detailed Provision	Comment	Requested Revision
C.2	C.2.d.ii (1) Stormwater Pump Stations	Although the Water Board has removed explicit requirements for monitoring pump station discharges, they have left in and strengthened the language regarding dissolved oxygen in discharges. There is no way to know whether the discharges are above 3 mg/L "at all times" without continuous monitoring, which is far more burdensome than the previous language.	Remove specific language regarding the 3.0 mg/L dissolved oxygen trigger. Alternatively, revise language to read, "Upon becoming aware that a pump station discharge dissolved oxygen concentration is below 3.0 mg/L, implement corrective actions such as...and confirm with follow up testing to verify effectiveness".
C.3	C.3.b.i - Regulated Projects	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). The problem with requiring new LID requirements to apply to unbuilt projects approved under previous permit conditions lies with the City's ability or inability to add new requirements. Issuance of building permits are ministerial acts. The City does not have the ability to impose new requirements at that time. The requirement needs to align with the City's legal ability to impose changes in the project design.	Delete this requirement.
C.3	C.3.b.i – Joint Stormwater Treatment Facility	This section poses a problem for the City because it requires that the stormwater management facility be built by completion of construction of the first regulated project. Practically, this is tremendously difficult because a stormwater treatment facility that covers more than one project requires funding from all projects. It is difficult to ask the first regulated project to cover the capital costs for a treatment	Allow the timeline for final construction of any facility that serves two or more projects be three years after the first regulated project is completed. The provision should also allow the regulated projects that are completed prior to completion of the stormwater treatment to be allowed to use temporary treatment facilities or a temporary connection to the stormwater

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		system that will serve several projects	system.
C.3	C.3.c.i.(2)(b) – LID Site Design and Stormwater Treatment Requirements	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. This requirement duplicates work that already exists and has been and continues to be implemented by Co-permittees. In addition, the requirement places an undue new level of work on the permittees, and a potential new level of uncertainty without any factual basis to support the increased need contained in the fact sheet.	Delete the requirement.
C.3	C.3.e.ii - Footnote 7 – Special Projects - Gross Density	The newly added definition of gross density conflicts with how the City has been calculating density credits for Special Projects and with past Water Board guidance on right-of-way and roadway projects. Specifically, including public right-of-ways and civic areas is not consistent with current density credit calculations and would reduce the amount of credit for a project that has these types of areas. The definition proposed in the Tentative Order is counter to professional land use planning standards, and should be revised to exclude 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.	Use Net Density to calculate Special Project density credits or change the definition of Gross Density to include only areas within the project boundary and exclude public areas including the right-of-way.
C.3	C.3.h.ii.(6)(b) - Operation and Maintenance of Stormwater Treatment	In the Tentative Order changes were made to allow permittees to track inspections by the number of sites instead of numbers of treatment facilities, which was an improvement, but inspection of at least 20% of the	Delete language requiring inspection of 20% of sites per year. Allowing flexibility will enable the City to better manage inspections while accounting for staffing losses and other

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	Systems	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.	challenges.
C.3	C.3.h.ii.(7)(c) - Operation and Maintenance of Stormwater Treatment Systems - Enforcement Response Plan	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 hydromodification 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 San Jose O&M Inspection Program developed an Enforcement Response Plan (ERP) that has been effectively implemented for over a year (prior to permit requirement). The City's ERP allows 90 days for corrective actions to be implemented, and more than 90 days for corrective actions when a site is actively working to resolve an issue. The new Tentative Order requirement for corrective actions to be implemented in 30 days does not allow enough time for identification of, communication with, and education of the property owner/operator. C.3 facilities are unique in that in the majority of cases responsibility is transferred several times before final ownership (e.g. developer transfers to owner who transfers to HOA who contracts maintenance). Knowledge and understanding of C.3 treatment facilities and responsibilities to maintain are often not effectively conveyed throughout each transfer of ownership. This	Allow 90 days for completion of permanent corrective actions and retain language allowing for more time when necessary and when the property owner is actively working to resolve outstanding issues.

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		results in a longer process of identifying, contacting, and educating the property owner, allowing the property owner to arrange for maintenance work to be completed, and following up with a re-inspection, all of which typically takes more than 30 days.	
C.3	C.3.h.v. - Reporting	The change to track inspections by the number of sites instead of number of treatment/HM facilities midway through the fiscal year (assuming an effective date of December 1, 2015) will make it challenging for the City to plan, conduct and report inspections during FY 15-16.	Establish an effective date of July 1, 2016 for when permittees change from tracking inspections by number of treatment/HM facilities to tracking by number of Regulated Project sites.
C.3	C.3.j.- Green Infrastructure Planning and Implementation	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 Green Infrastructure. Discussions with Water Board staff on C.11 and C.12 have suggested that load reductions can be accomplished by private development and redevelopment, whereas C.3.j only refers to public retrofits.	Make language more consistent with the expectations in C.11 and C.12. Also 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 impervious surface retrofit targets.
C.3	C.3.j.i. - Green Infrastructure Program Plan Development	Because 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	Provide 18 months to complete and obtain governing body approval of the green infrastructure plan framework. Provide the entire permit term to complete the GI Plan. Eliminate the 2-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. Implementation should begin after the

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		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 (3 ½ years from the expected Permit effective date). Completing a GI Plan will be a complex and time-intensive process which will require a great deal of interdepartmental coordination and resources.	GI Plan is completed.
C.3	C.3.j.ii. - Green Infrastructure Program Plan Development – Early Implementation	Provision C.3.j.ii requires early implementation of green infrastructure, focused on identifying and implementing public projects that have potential for green infrastructure 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 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.	Efforts during the MRP 2.0 term should focus on development of long-term Green Infrastructure Plans and opportunistic implementation of green infrastructure projects where feasible and where funding is available. Add the following language that would allow for consistent review of capital projects for GI opportunities, based on specified criteria: "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

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			factors. Permittees will collectively evaluate and develop guidance on the criteria for determining practicability of incorporating green infrastructure measures into planned projects."
C.4	C.4.d.iii.(3) - Reporting Requirement	The Water Board changed the current reporting requirement from "number of violations resolved within 10 working days" to "number of enforcement actions resolved within 10 working days". Such a roll-up from violations to enforcement actions will require time and investment to re-program the City's enforcement database to provide such data. This would require database changes that would need to be completed by (the already past date of) July 1, 2015 , to report out the newly required information in the 2015-2016 Annual Report. San Jose has historically tracked and reported at the violation level. As drafted, the Tentative Order would require the City to shift from reporting on the more specific "number of violations resolved "to the more general "number of enforcement actions resolved." We believe that tracking and reporting at the violation level is more aligned with the Water Board's intent to protect water quality because it gives the Water Board information of the types of problems observed by inspectors that could potentially or actually impact water quality, while reporting how effective the municipality is at correcting each and every violation, as opposed to enforcement actions, within 10 days.	Allow permittees the option to report data at the more informative and detailed violation level OR at the enforcement action level. If the Water Board does not provide the option above, allow permittees a transition time, once permit is approved, to make necessary database changes so we can efficiently plan for, track, and report the required information. Reporting new data beginning in FY 16-17 is more appropriate, providing until July 1, 2016 (~6 months, if permit approved in December 2015) to make the necessary database changes.
C.4	C.4.d.ii.(3) - Inspections	Current reporting requirements include listing the	To be consistent with current requirements,

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	(reporting)	"frequency and types/categories of violations observed" and "types of violations noted by business category" therefore, the City has listed the number of actual and potential violations and the types of actual and potential violations noted by business category. This new section of the Tentative Order indicates the need to list "frequency and types of potential and actual discharges noted by business category. These are not the same thing.	change the language to read "frequency and types of discharges noted by business category."
C.5	C.5.a. - Legal Authority	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 are "already reported to the Water Board through the California Integrated Water Quality System Project." While we appreciate the attempt to exempt those illicit discharges reported to the Water Board consistent with requirements outside of the MRP, 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.	Move the text "already reported to the Water Board through the California Integrated Water Quality System Project" 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 text be added to the 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,

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			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	C.5.e. iii: Control of Mobile Sources (tracking and reporting requirements)	Although Water Board has indicated that the Tentative Order contains no new requirements for Mobile Businesses, Tentative Order requires a level of reporting of FY 15-16 data (and FY 18-19) that will require the City to make changes to its environmental enforcement database by (the already past date of) July 1, 2015 in order to track and report out on (e.g. number of inspections of mobile businesses, number/type of enforcement actions on mobile businesses).	Allow permittees a transition time, once permit is approved, to make necessary database changes and be able to track and report the required information. Reporting new data in FY 16-17 is more appropriate, providing permittees until July 1, 2016 (~6 months, if permit approved in December 2015) to make the necessary database changes.
C.6	C.6.d.ii.(2) - Plan Approval Process	The current permit requires verification that a site has filed a Notice of Intent for permit coverage under the Construction General Permit (CGP) prior to approval and issuance of local grading permits. Requiring development projects to obtain coverage under the CGP before the City can issue grading permits could delay projects and/or raise project risk levels as a result of unnecessarily lengthening CGP coverage periods. Lengthening CGP coverage could result in additional annual fees. Determination of whether a developer/operator has "obtained coverage" under the CGP is the responsibility of the Water Board, not permittees.	Maintain the current permit requirement to require verification that a site has filed a Notice of Intent for permit coverage under the Construction General Permit in the Tentative Order.
C.6	C.6.e.ii (2) (b)- Frequency of Inspections (Hillside Projects)	The Tentative Order provides new criteria (> 15% grade; 5000 sq ft of disturbed area) for hillside development sites that need to be assessed to	Remove this provision to allow the City to effectively use the flexibility of the current permit provision for High Priority Sites to

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		determine impact of having to conduct monthly CON inspections at such hillside projects. This new provision will add additional tracking and outreach work. The City does not currently track site slope through our Grading Permit Database or Inspection Tracking Database. Additionally, the implementation date coincides with the effective date of the permit. This does not allow any time to develop a tracking system or provide outreach. Reporting would only cover half a fiscal year. The City will require time to make database changes and inter-departmental process changes to track and report the required information based on the new criteria. All database changes would need to be completed by (the already past date of) July 1, 2015.	capture all appropriate construction projects with potential impacts to receiving waterbodies from erosive slopes. The City currently captures construction sites of sizes both above and below the proposed 5,000 SF threshold but does not track the slope. However, slope, in addition to the other High Priority factors, is included in the decision to classify a site as High Priority. If the provision is maintained in the permit, it is recommended that the 5,000 SF threshold is removed and the 15% slope is added to the current High Priority reference to slope. Additionally, the implementation date should be July 2016 to allow time to develop a tracking method and to reduce reporting inconsistencies.
C.6	C.6.e.iii.(2)(g) - Reporting	The text refers to the "number of violations". This is inconsistent with similar reporting requirements in Provision C.4., but consistent with the City's current practice. San Jose has historically tracked and reported at the violation level. We believe that tracking and reporting at the violation level is more aligned with the Water Board's intent to protect water quality because it gives the Water Board information of the types of problems observed by inspectors that could potentially or actually impact water quality while reporting how effective the municipality is at correcting each and every violation, as opposed to enforcement actions, within 10 days.	Allow permittees the option to report data at the more informative and detailed violation level OR at the enforcement action level. If the Water Board does not provide the option above, allow permittees a transition time, once permit is approved, to make necessary database changes so we can efficiently plan for, track, and report the required information. Reporting new data beginning in FY 16-17 is more appropriate, providing until July 1, 2016 (~6 months, if permit approved in December 2015) to make the necessary database changes.
C.10	C.10.a.i - Schedule	The City recognizes trash as an important priority and	Extend the compliance date for achieving 70%

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		asserts that large scale efforts to control trash must move forward methodically, cost-effectively, and accompanied by adequate resources and time to implement in order to support success. Reductions become increasingly more challenging the closer the City moves towards the trash reduction goal of "no adverse impacts". This provision 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. The reduction percentages may not be attainable in the timeframe proposed.	reduction to at least July 2018.
C.10	C.10.a.ii.b – Trash Generation Area Management (Private Drainage Areas)	The intent of mapping these drainages is unclear. Mapping would require a significant undertaking that would result in minimal trash reduction and water quality benefit. Ensuring that private drainages are at a "low" trash generation level does not require mapping. High priority areas can be identified by existing municipal inspection programs already in place. It is unlikely that the scale of effort prescribed will be achievable in the required timeframe.	Delete this requirement.
C.10	C.10.a.iii – Mandatory Minimum Full Trash Capture Systems	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. This provision of the Tentative Order currently requires permittees to install a screen	Remove the requirement for "screening" all Green Infrastructure treatment facilities installed and maintained consistent with provision C.3 and deem that these facilities are equivalent to full capture systems.

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		(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 City'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 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.	
C.10	C.10.b.i.a - Maintenance	Maintenance frequencies based on trash generation are inconsistent with the experience and knowledge of the City. The appropriate frequency of maintenance will be dependent on variations in rainfall levels and site specific conditions, such as urban canopy. Furthermore, full trash capture devices may plug for reasons, such as unusual debris types entering the storm system that are one time occurrences and not maintenance frequency dependent. The prescribed maintenance frequencies are not cost effective and it is unlikely that the scale of effort prescribed will be achievable given the cost. Also, it may not be	As an alternative to the specified arbitrary maintenance frequencies, require permittees to develop and implement permittee-specific maintenance programs to achieve and maintain full capture criteria. Require permittees to 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 better way to ensure adequate maintenance of these devices into the future.

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		operationally efficient to change maintenance frequency without analysis of site and event circumstances when a full trash capture unit plugs. The prescribed maintenance requirements will discourage use of full trash capture devices.	
C.10	C.10.b.i.b – Maintenance Records	Records and policies will need to be developed for large and small devices. The City is concerned that reporting on flooded devices may not be possible given the urgency associated with storm response.	Include language that acknowledges the challenges with data collection during urgent storm response scenarios and provides for alternative reporting requirements under these conditions.
C.10	C.10.b.ii.b – Visual Assessments of Outcomes Other Than Trash Management Actions	The referenced section (C.10.b.ii(v)) does not exist.	Add the referenced section or add language elsewhere to identify acceptable assessment methods. Include guidance for the referenced assessment method.
C.10	C.10.b.ii.b.iv – Visual Assessments of Outcomes Other Than Trash Management Actions	The City requests additional clarity on how Executive Officer approval can be obtained, including a timeframe within which the Executive Officer would provide a decision, and the ability to consider a proposal as accepted if no objection is received within that timeframe (e.g., within 30 days from submittal for consideration).	Delete the requirement for Executive Officer approval.
c.10	C.10.b.iv – Source Control	The City recognizes the most important actions that can be taken by permitees are those that eliminate the generation of litter prone items in perpetuity. The City's actions have made it a national leader for eliminating the sale or distribution of litter prone items by adopting a ban on single use carry out bags and expanded polystyrene foam food containers. These actions took significant political support, public resources, and were done in partnership with environmental Non-Governmental Organizations (NGOs).	Increase the maximum reduction value for all source control actions combined to at least 15%. Supporting evidence would be required to claim reductions associated with source controls.

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		The 5% maximum reduction for all source control actions is arbitrary and inconsistent with current knowledge of the percentage of trash in stormwater associated with specific litter-prone items associated with these source control actions. The programs implemented to address these litter prone items are effective and directly benefit stormwater quality. Data collected by the City indicates that the ban on single-use bags has resulted in a 71% reduction in bags found in waterways on average. Data collected by MRP permittees indicate that each individual source control action reduces between 5 and 10% of the trash found in MS4s on average. These reductions are likely not observed by visual assessment protocols because the qualitative assessments 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.	
C.10	C.10.b.v – Receiving Water Observations	Requiring receiving water observations to be conducted downstream from trash generation areas converted to "low" trash generation gives the appearance that these observations could be used to judge compliance with reductions associated with municipal stormwater. This is confusing because the process for judging compliance with stormwater reductions is outlined elsewhere in the Tentative Order.	Revise the language 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 outside of the MS4 that are causing or contributing to adverse trash impacts in the receiving waters."

Attachment A: City of San Jose Detailed Comments on the Municipal Regional Permit Tentative Order

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.10	C.10.e.i - Creek and Shoreline Cleanups	The City views Creek and Shoreline Cleanups as important trash reduction activities that promote community involvement, create awareness of trash issues, and provide tangible water quality benefits. The City has been engaged in and has supported a variety of community creek cleanups. While the City appreciates 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 requirement for a minimum cleanup frequency of 2 times per year at each specific site creates inflexibility and is too constraining. Some permittees may choose to cleanup many sites 1x/year rather than a small number of sites 2 times per year. It is most important that trash is being removed from creeks and shorelines, not how many times at a specific site.	Revise the Tentative Order to increase the maximum offset for creek and shoreline cleanups to at least 10%; and remove the requirement that a site be cleaned up at least 2 times per year before claiming an offset.
C.10	C.10.e.ii – Direct Trash Discharge Controls	The City appreciates the inclusion of load reduction benefits associated with direct dumping (e.g., homeless encampment cleanups), however, the 10% maximum offset for these important programs significantly undervalues the tangible water quality benefits they provide. Jurisdictions with greater trash impacted communities should be given the opportunity to prioritize resources to achieve the greatest water quality benefit.	Increase the maximum offset for robust programs addressing direct discharges from 10% to at least 25%.

Attachment A: City of San Jose Detailed Comments on the Municipal Regional Permit Tentative Order

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C.10	C.10.f - Reporting	Compliance with NPDES permits is determined by the Water Board. Provision C10.f.v.b requires permittees 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.	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.12	C.12.a – Implement Control Measures to Achieve Load Reductions	There is no 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 more importantly, many are not within the permittees control (e.g., extent of source properties that will be found, building demolition rates, and redevelopment rates), making compliance uncertain.	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) and 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 agreed upon upfront and incorporated into the permit.
C.12	Provision C.12.a.iii. – Implement Control Measures to Achieve PCBs Load Reductions (Reporting)	Several reporting requirements in Provision C.12.a. are 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	Extend the deadlines for the referenced reports to the 2017 Annual Report

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		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...]....".	
C.12	Provision C.12.a.iii. – Implement Control Measures to Achieve PCBs Load Reductions	Significant efforts have been made to-date by permittees and through the RMP to better understand the distribution of PCBs and mercury in watersheds. PCB hot spots are generally associated with older (pre-1980) industrial areas and other areas where PCBs were used, transported, or managed during the early to mid 20th century. Reductions in the permit are assigned to County Stormwater Programs based on population. PCBs are not directly associated with population. Rather, they are associated with areas where they were used, transported or otherwise managed. Although the population of Santa Clara County is equal to or larger than the other three main counties included in the MRP, based on over a thousand sediment and water samples analyzed Baywide, PCBs are not as abundant in the Santa Clara Valley as some other areas. Low levels in the Southern Bay Area are likely due to the limited amount of older industrial areas and the fact that development largely occurred after PCBs were phased-out of production.	If a load reduction target (as a Numeric Action Level) is retained in the permit, Water Board staff should use a more appropriate metric than population to allocate load reduction responsibilities, such as the amount of older industrial areas currently present in each County. This revision would more closely correlate with our current understanding of the distribution of these contaminants in watersheds, more equitably distribute compliance responsibility among different Counties and Permittees, and potentially make stormwater load allocations more achievable by targeting actions where PCBs are most abundant.
C.12	C.12.b. Assess Load Reductions from Stormwater	Values for certain key accounting parameters for managing PCBs-containing materials and wastes during building demolition activities were left out.	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

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			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.
C.12	C.12.b.iii.(1) Assess Load Reductions from Stormwater (Reporting)	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.	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.
C.12	C.12.b. Assess Load Reductions from Stormwater	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.	PCB 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.
C.12	C.12.b.iii.(1) Assess Load Reductions from Stormwater (Reporting)	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	Delete requirement to develop and submit permittee-specific proportions of load reduction responsibilities.

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		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.	
C.12	C.12.c – Plan and Implement Green Infrastructure to Reduce PCBs Loads	This provision 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. 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 green infrastructure 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	Delete provision C.12.c.

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		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.	
C.12	C.12.c – Plan and Implement Green Infrastructure to Reduce PCBs Loads	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.	Delete provision C.12.c.
C.12	C.12.f – 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. Given the large standing stock of PCBs known to be present in certain buildings in the Bay Area, there could potentially be significant benefits to implementing the proposed control program. 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	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.

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		controls is also highly uncertain at this time. 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.	
C.15	C.15.b – Conditionally Exempted Non-Stormwater Discharges	This omission of previously covered discharges forces municipal water purveyors to gain coverage under the newly developed Statewide General Permit. This requires another permit fee and separate reporting requirements, increasing the amount of regulatory overhead for both the State and affected municipalities.	Insert provision C.15.b.iii from Order R2-2009-0074, with monitoring requirements from the statewide permit.