



CITY OF
WALNUT
CREEK

June 25, 2015

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

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

Subject: City of Walnut Creek's Comments on the Tentative Order Reissuing the Municipal Regional Stormwater Permit (MRP 2.0)

Dear Mr. Wolfe and Members of the Board:

Thank you for the opportunity to comment on the Tentative Order reissuing the Municipal Regional Stormwater Permit (MRP 2.0). The City of Walnut Creek strongly supports the goals of reducing stormwater pollution and protecting our local creeks, the delta and San Francisco Bay.

For the past two years, two staff members from the City of Walnut Creek have been participating at the Steering Committee meetings representing the Contra Costa Clean Water Program and have engaged in an ongoing dialogue with your staff regarding MRP 2.0.

Many new ideas and approaches that build upon experience gained were generated during this process, which included discussions about consolidating or eliminating "less beneficial tasks" in the permit, extending implementation dates, reducing reporting requirements, where those items maintained or increased the effectiveness of permittee efforts in protecting water quality. The process included discussions about the reality that new or additional funding sources will be required to implement the new and expanded requirements contained in MRP 2.0, that these sources have not been identified, and that it is important to allocate limited resources in ways that would focus upon, and maximize effectiveness of, the major new and expanded mandates.

Mr. Bruce Wolfe
June 25, 2015
Page Two

Despite the extensive effort on all parts, few of these ideas were carried forward into MRP 2.0. Therefore, and with great reluctance, the City of Walnut Creek opposes MRP 2.0 as it is currently drafted. We ask that your Board consider the following comments, and direct Water Board staff to work with the permittees to revise the Tentative Order in a way that recognizes limited resources, acknowledges the difference in actions and challenges of permittees to date, and focuses resources on those actions that will produce the greatest benefits to the goals of the program.

The City of Walnut Creek's specific concerns are as follows:

Green Infrastructure (GI) planning should be required only at the regional level.

The Tentative Order includes a new mandate to develop and implement Green Infrastructure Plans. We support the ultimate goal of significantly reducing the amounts of urban runoff pollutants (such as PCBs and mercury), flowing into receiving waters. However, the Tentative Order mandates each permittee implement Green Infrastructure plans on an individual project level and imposes unachievable deadlines. Because it requires significant investment on the part of all permittees, we ask that the Board consider limiting the efforts for permit 2.0 to planning at the regional level only.

Many city streets have only a 50' right-of-way. This is not sufficient width to comply with the complete streets requirements to provide safely for all modes of transportation and to provide the bioswales that are required by the Tentative Order. We must have some flexibility to balance all community needs and requirements with the need to meet water quality standards. In cities, such as Walnut Creek, that have very low potential for PCBs and mercury, mandating Green Infrastructure as proposed is not fiscally responsible. The City should be allowed to find the right balance for its community. Low-impact development (LID) facilities should be constructed where they make sense but not at the cost of needed community facilities. The permittees are in the best position to determine that balance for their respective communities. Finally, if you retain these unrealistic requirements, the language in Provision C.11 (Mercury Reduction) and C.12 (for PCBs reduction) should be consistent.

Special Projects Provision should consider smart growth elements.

The definition of Floor Area Ratio and Gross Density in the Tentative Order needs to be modified to include parking structures and to exclude areas dedicated to the public for pedestrian activities or access. The language in the Tentative Order creates a substantial disincentive for smart growth development in suburban downtown areas. This is especially true for the City of Walnut Creek where many years ago the voters approved height restrictions that limit the ability for any development project to achieve

Mr. Bruce Wolfe
June 25, 2015
Page Three

the minimum density required in the Tentative Order. With the locally-imposed setbacks that the project applicant must consider and the other setbacks required by the California Building Code for fire access and building egress, and utility requirements, the requirement in the Tentative Order mandating the construction of low impact development in these suburban downtown areas probably means that redevelopment, which will otherwise benefit water quality, will probably not be economically feasible.

For example, a mixed-use project in downtown Walnut Creek that is currently under construction include in its frontage, a public courtyard. Under the proposed definition in the Tentative Order, the project would have eliminated this important public amenity plaza as the project cannot meet the more restrictive density requirements.

MRP 2.0 should include incentives for other control measures that reduce trash and the timeline should be extended.

As the City of Walnut Creek has successfully reduced its trash load by 51 percent within the past five years, there are only very limited opportunities remaining to further reduce our trash load with our municipal maintenance efforts. The larger opportunities lie within properties outside the City's jurisdiction (such as BART, Caltrans, and schools). To reach next goal of 70% trash reduction, we will need more time to engage the private and other public property owners to reduce trash on their properties. To be ultimately successful in achieving this goal, Water Board needs to include trash reduction provision in the permits of BART, Caltrans and the school districts.

The Tentative Order requires permittees to ensure private properties plumbed directly to municipal storm drains are equipped with full trash capture divides or to verify that these locations are considered to have "low" trash generation rate. To fulfill this provision, permittees will have to undertake costly efforts to investigate and map these properties. We ask that the Board considers deleting this provision. Instead, we request that the Board consider utilizing the inspections and enforcements of these properties as outlined in Provision C.4 (Commercial and Industrial inspections) to control/reduce trash generation.

Finally, the maximum credit of 5 percent that permittees can receive for product bans (from the original 20 percent maximum credit) is a dis-incentive for future source control actions. Since the adoption of both plastic bag and polystyrene-based food service ware ordinances, we have begun to see their positive impacts to our local environments. The number of litter of such materials has significantly decreased – in some areas, disappeared. Source control (along with enforcement efforts) is one measure that the

Mr. Bruce Wolfe
June 25, 2015
Page Four

City of Walnut Creek has adopted that has been demonstrated to be working effectively. We believe that the maximum credit for source control should remain at 20 percent, and that it is not appropriate to change the percent after we acted in reliance upon it.

Permittees Must Have a Clear Path to Compliance

Considerable time and effort has been spent discussing how to reduce levels of pollutants of concern flowing into our waterways. However, as drafted, MRP 2.0 provides no clear path for permittees to avoid noncompliance. Some examples include:

- The Tentative Order mandates achieving specified reductions in the total quantity of PCBs discharged from municipal storm drains. A major means of achieving these reductions is through removal of PCBs during building demolitions. However this fails to acknowledge that permittees have no control over timing of when properties redevelop. Rather than applying controls to a specified number of buildings demolished, we believe it will be more effective to require the development and implementation of a program to control PCBs during building demolitions, and that having and implementing such a program should constitute compliance.
- The Tentative Order includes (in the Fact Sheet) an incomplete method to achieve stipulated reduction credits for each building demolished with PCB controls, for each redeveloped site with new bioretention facilities, and for finding and abating concentrated sources of PCBs. Looking for hidden PCB sources is a good idea, but permittees can't guarantee that they will find them and be able to abate them.

We ask that development of a program to systematically identify and review potential sources, and refer them to appropriate agencies for abatement, be the basis for credit toward compliance.

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

Sincerely,



Bob Simmons
Mayor