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July 8, 2015

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

Dear Mr. Wolfe and Members of the Board:

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

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

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

This approach acknowledges the reality that new or additional funding sources required to implement the new and expanded requirements contained in MRP 2.0 have yet to be identified; and, advocates allocating limited resources in ways that would focus upon, and maximize effectiveness of the major new and expanded mandates.

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

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

The draft Tentative Order includes a new mandate to develop Green Infrastructure Plans. This coordinated, multi-year effort represents a significant paradigm shift toward developing comprehensive long range plans that will significantly reduce the amounts of urban runoff pollutants, including the pollutants of concern, flowing into receiving waters. MRP 2.0 requires that permittees develop a framework for the development of the Green Infrastructure plan and have it approved by its governing body, mayor, city manager or county manager within 12 months. This timeline is unrealistic in regards to budgeting and allocating resources to develop such a framework, the time required to develop the framework, and navigate the process to gain approval. The implementation of such efforts will also require significant investment on the part of all permittees, for which funding is undefined.

The draft Tentative Order also includes public information and outreach requirements including advertising campaigns, media relations, public outreach events, and stormwater pollution prevention education. Though we believe that such outreach and education is important, we also believe that focused efforts at a regional level, supported by permittees would be more effective than individual campaigns by permittees or countywide programs. There is great value in consistent message throughout the region.

As issuance of MRP 2.0 is anticipated mid-year, where permittees are under MRP 1.0 until the effective date of MRP 2.0, we are requesting clarity on the annual reporting requirements for the year ending June 30, 2016. We are requesting that one reporting framework be prepared and approved by the Board prior to issuance of MRP 2.0 so the permittees can focus their efforts on appropriate actions.

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

- Plan and implement a program to manage PCB-containing materials in commercial and industrial structures constructed or remodeled between 1950 and 1980 at the time those structures are demolished. The most effective programs would be one that are consistent either region wide or state wide and would be modeled after existing effective programs such as asbestos or lead abatement. We are requesting that the Board consider implementation of a regional or state program administered by the state where municipalities require contractors to provide appropriate documentation that they have filed with the state prior to the issuance and closure of demolition permits;
- Demonstrate trash load reductions of 70% from 2009 levels by July 1, 2017 and 100% by July 1, 2022—by installing full trash capture devices or implementing equivalent trash control measures and evaluating their effectiveness through visual surveys. Though these implementation levels were required in MRP 1.0, additional intermediate reduction levels are outlined in the draft Tentative Order including 60% by July 1, 2016 and 80% by July 1, 2019. As trash loads are reduced, each incremental reduction requires increased efforts. Thus we are requesting removal of the intermediate targets and additional time to meet the load reduction requirements; and

- Require private property owners in high-trash and moderate-trash areas to install full trash capture devices or implement equivalent measures.

These major new mandates will require a significant, sustained effort to implement, absent any new or additional funding source.

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

We request that your staff review the attached table and work with permittee representatives to make most or all of the recommended adjustments to “less beneficial tasks.”

Of particular concern to the City of Concord is the inclusion of the following proposal that “any Regulated Project that was approved with no Provision C.3. stormwater treatment requirements under a previous MS4 permit and that has not begun construction by the effective date of this permit, shall be required to fully comply with the requirements of C.3.c and C.3.d.” This effective sunset on “grandfathered” projects poses potentially serious legal ramifications for entitled projects with conditions of approval which are preserved under various vested tentative maps.

Permittees Must Have a Clear Path to Compliance

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

- The draft Tentative Order mandates achieving specified reductions in the total quantity of PCBs discharged from municipal storm drains. A major means of achieving these reductions is through removal of PCBs during building demolitions. However this fails to acknowledge that permittees have no control over timing of when properties redevelop. *We ask that development of a program to control PCBs during building demolitions, rather than applying controls to a specified number of buildings demolished, should represent compliance with this requirement.*
- The Tentative Order includes (in the Fact Sheet) an incomplete method to achieve stipulated reduction credits for each building demolished with PCB controls, for each redeveloped site with new bioretention facilities, and for finding and abating concentrated sources of PCBs. Looking for hidden PCB sources is a good idea, but permittees can't guarantee that they will find them and be able to abate them. *We ask that development of a program to systematically identify and review potential sources, and refer them to appropriate agencies for abatement, be the basis for credit toward compliance.*

- The draft Tentative Order allows only four (4) months after Permit adoption for permittees to submit a more complete “measurement and estimation methodology and rationale” for stipulating PCB reduction credits. *We ask that BASMAA’s PCBs programs accounting methodology be finalized, incorporated into the permit, and then used to calculate PCBs load reductions during permittee annual reporting.*
- Water Board staff has stated the threat of noncompliance is intended to strongly encourage permittees to find and abate hidden PCBs, and that Water Board staff would use “enforcement discretion” if and when permittees are unable to meet the mandated PCB load reductions. From a municipal government perspective, new financial and staffing commitments must be based on agreed upon goals and objectives, and have well-defined metrics for measuring progress. *We ask that the load reduction performance criteria not be the point of compliance, and that Water Board staff work with permittee representatives to revise the Draft Tentative Order so that it provides a clear and feasible pathway for permittees to attain compliance. Most factors that are key to meeting the load reduction performance criteria are uncertain and many are not within permittee control (e.g., extent of source properties that will be found, building demolition rates, and redevelopment rates), making achievement of compliance uncertain.*

The City of Concord 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,



Timothy S. Grayson
Mayor, City of Concord

cc: Thomas Dalziel, Contra Costa Clean Water Program
Concord City Council
Valerie Barone, City Manager
Victoria Walker, Community and Economic Development Director
Joelle Fockler, City Clerk

Enclosures: Table 1 – Request for Changes to the May 11, 2015 Tentative Order

Table 1 – Request for Changes to the May 11, 2015 Tentative Order

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

Provision	Task or Requirement	Requested Adjustments
C.2.f.	Corporation Yard inspection requirements.	Eliminate this requirement, as it duplicates the requirements for inspections already included in the Stormwater Pollution Prevention Plans (SWPPPs) for these same facilities.
C.3.b.i.	Eliminates grandfathering of Regulated Projects with vested tentative maps approved prior to advent of C.3 requirements	Allow municipalities flexibility to require these applicants to implement stormwater treatment requirements only to the extent not in conflict with state law and existing development agreements
C.3.b.ii.(4)	Certain Roads Projects are Regulated Projects under Provision C.3	Delete this requirement as the intent is superseded by the Green Infrastructure requirements in Provision C.3.j.
C.3.b.ii.(1)(c)	Requires projects where 50% or more of existing impervious area is redeveloped to provide treatment for entire area.	Delete this requirement as the intent is superseded by the Green Infrastructure requirements in Provision C.3.j.
C.3.e.ii.	Special Projects—allowance to use non-LID treatment on smart growth development projects that meet specified location and gross density criteria.	To avoid a disincentive for including pedestrian amenities, allow public plazas to be omitted from calculation of project gross density.
C.3.e.v.(1)	Requires Permittees to track Special Projects that have been identified (application submitted) but not approved.	Delete this requirement, as the number of projects, and amount of impervious area, has proven to be small.
C.3.e.v.(2)	Requires Permittees to conduct and document an analysis of the feasibility of LID treatment for Special Projects.	Delete this requirement, as it creates considerable additional effort for applicants and Permittees without any expected water-quality benefit.
C.3.g.vii.	Requires Contra Costa municipalities (through CCCWP) to submit a technical report describing how Contra Costa will implement current Permit hydromodification management requirements.	Delete requirement to submit a technical report. CCCWP submitted a 2013 report on the results of a multi-year monitoring study that concluded current policies and criteria meet these requirements.
C.3.g.iv.	Allows Permittees to propose a different method for sizing hydromodification management facilities that is not biased against Low Impact Development, but requires a Permit amendment before using the method.	Delete requirement for a Permit amendment before the method is used. Note: the Fact Sheet accompanying the Tentative Order states that Water Board Executive Officer approval would be required, not a Permit amendment.
C.3.h.ii.(6)(b) and (c)	Requires Permittees to inspect 20% of Regulated Projects annually, as well as every project at least once every 5 years.	Delete the annual requirement to allow flexibility in scheduling inspections.

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

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