

CITY OF OAKLAND



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July 10, 2015

Dr. Thomas Mumley
Assistant Executive Officer
San Francisco Regional Water Quality Control Board
1515 Clay St
Oakland, CA 94612

Transmitted via email: mrp.reissuance@waterboards.ca.gov

Dear Mr. Mumley,

The City of Oakland is filing written comments¹ on the proposed Municipal Regional Stormwater Permit (MRP 2.0) issued on May 11, 2015 (NPDES CAS612008). These comments should be considered alongside comments submitted by the Alameda County Clean Water Program and Oakland's earlier comment letter submitted on March 26, 2015.

Thank you for the opportunity to submit these comments. The City of Oakland is committed to reducing stormwater pollution and takes pride in our strong inspection and enforcement programs, education and outreach programs, volunteer programs and our leadership in promoting source reduction and green infrastructure.

We have several concerns regarding the proposed MRP 2.0 requirements, specifically regulations for trash reduction and PCB reduction.

¹ It should be noted that these comments are provided solely to assist the Water Board's consideration of and potential reaction to concepts or language it may, in its discretion, elect to advance relative to the reissuance of the Municipal Regional Permit for stormwater discharges. It is not intended and should not be misconstrued as an offer to take on, or volunteer for, any potential permit requirement that represents a new program or higher level of service relative to the MRP or its predecessor permits.

Section C.10, Trash Load Reductions

1. Extend schedule for 70% and 100% Trash Reduction Targets to July 1, 2019 and July 1, 2025, respectively (C.10.a.i)

Change the milestone dates for trash reduction to make the Regional Board's MRP 2.0 permit compliance trash reduction timelines consistent with the Statewide Trash Amendment and Caltrans permit and will allow sufficient time for new program implementation.

Coordinating the timelines with the State and Caltrans will promote needed partnerships, funding streams and program policy initiatives such as source reduction efforts, public education campaigns and enforcement policies.

Extending timelines will allow sufficient time for new program implementation of initiatives that are still awaiting data collection. For example, even though Oakland has installed full trash capture devices covering over 900 acres additional full capture devices are increasingly infeasible and constrained. As a result, Oakland is looking into combining street sweeping with inlet devices. This modification to our street sweeping program is dependent on the results of the forthcoming (December 2016) results of BASMAA's street sweeping study to see how effective street sweeping will be in reducing street litter. Also, changing the sweeping program requires significant lead time for City-wide route analysis, council approval, training drivers on new routes and parking restrictions notifications and resigning before implementation can begin.

These short time frames with large trash reductions are also out of step with other new environmental requirements implementation timelines. For example, the recycling program (AB 939) which had a designated funding source, known volume amount, measurable sources and reductions provided a 12 year time frame for a 50% reduction. As a comparison, the MRP trash regulations have provided half the time frame for the same reduction but with no dedicated resources, indeterminate baseline and sources and tremendous measurement uncertainties.

2. Increase Source Reduction Offset to a Maximum of 15% (C.10.b.iv)

The proposed 5% cap on source reduction creates a disincentive for cities to identify, plan and implement more sustainable trash reduction measures. Changing individual behavior with bag bans, polystyrene bans, smoking bans, etc. is the most effective and long-term way to reduce litter. More importantly, using source reduction to target individual items, such as Styrofoam, allows the City to target the pollutants that are the most detrimental to the marine environment. Often these efforts require significant resource investment and certainty of regulatory outcomes is necessary to gather the

political will to invest in these measures. Increasing the source reduction to 15% will incentivize permittees to move forward with more innovative approaches.

We disagree with RWQCB staff that a source reduction credit is “double-dipping.” Product bans are implemented jurisdiction-wide and should be credited as such. It is unlikely that a product ban would be detected using the visual sidewalk assessments required in the permit. For example, Alameda County studied inlets pre- and post-product bans and quantitatively measured and verified an 8% reduction with implementation of a polystyrene ban and plastic bag ban. While it is apparent that plastic bags and restaurant Styrofoam take out containers are no longer a litter item found on streets, the visual assessment methodology with only four categories does not change a category from very high to high or moderate with an 8% reduction. Such smaller changes, implemented across the entire City (even in “green areas”) provide multiple benefits and demonstrated trash reduction. A source reduction offset is the only method for accounting for that reduction.

3. Remove Receiving Water Monitoring until Protocols are Established (C.10.b.v)

The permit provision requiring monitoring of receiving waters for trash should be modified to clarify that this monitoring effort is only for detecting trends in trash reduction and should include sufficient lead time and partnership framework support to develop region-wide metrics and protocols. For a monitoring program to provide useful and accurate information, it needs to be designed to answer specific management questions and have clear protocols. Neither permittees nor RWQCB staff have developed the management questions or designed the monitoring protocols. Implementation of this requirement will result in permittees spending limited trash reduction resources to gather inaccurate, indeterminate and non-comparable monitoring results. We recommend the Regional Board remove the receiving water monitoring requirement until clear monitoring protocols are developed and adopted.

4. Remove Requirement to Map Private Property Storm Drainage Pipes (C.10.a.ii.b)

Mapping private storm drainage infrastructure is problematic as the infrastructure on private properties is unknown and not previously mapped or recorded. Oakland’s inspection approach is a more cost-effective control measure. Oakland is using its stormwater inspection program to assess trash levels in commercial properties. The City is conducting inspections of restaurants, shopping malls, and other businesses with parking lots and areas where trash could collect. In FY 14/15 the City targeted over 300 businesses and assessed the level of trash generated from these sites. The City will continue to use its authority to require increased trash control on those properties with high and very high trash levels.

5. Visual Assessments should not be Required to Determine Compliance (C.10.ii.b)

Permit compliance is overly reliant on the visual assessment methodology. This methodology has not been vetted sufficiently to be used as a permit compliance tool: 1) The temporal and spatial variation is not well understood or quantified; 2) There is an element of subjectivity to the assessments that cannot be eliminated; 3) The definitions of generation rate categories (i.e., Very High, High, Moderate, and Low) are too broad to detect actual trash reductions in many cases; 4) How to account for variations from one assessment to the next has not been determined; and 5) Visual assessments are limited to targeted areas and overlook measuring jurisdiction-wide programs including:

- Removal of illegally dumped materials. The City has increased its removal of illegal dumping by 40% since 2009 and spends approximately \$3 million per year on this program
- Implementation and promotion of reward system for information leading to illegal dumping source(s)
- Volunteer efforts – over 5000 clean-up events City wide
- Targeted trash assessment and enforcement of commercial properties
- Identifying and conducting enforcement of trash container overages
- Education programs

Additionally, conducting visual on-land assessments is time consuming; drawing staff and finite resources away from actual trash reduction efforts that directly improve water quality. Oakland has 6,500 street miles, 13,000 curb miles. Per the permit's 10% monitoring requirement and excluding low trash and full trash capture areas, Oakland may be required to visually assess up to 600 miles of streets up to four times per year. We estimate this could cost the City over \$2 million per year just for visual assessments.

6. The Cap on the Maximum Offset for Creek and Shoreline Clean-up should be Increased to 20% (C.10.c.i)

Oakland's volunteer clean-up programs have grown 3000%. Most of Oakland's creeks are in Parks and the many Adopt-A-Park events (1900 events held in 2014) would not receive appropriate credit. An arbitrary cap of five percent does not reflect the trash reduction Oakland has achieved from its volunteer clean-ups. There appears to be no basis for assigning a 1% total reduction for every 10% of the Permittees annual baseline. This trash is directly impacting local waterways. However, the trash is often deposited along these waterways through mechanisms other than discharge from the municipal storm drain system. Cleanup efforts are often the most effective approach to reducing trash impacts to waterways, and these efforts should be encouraged. The maximum offset should be increased to at least 20%.

Section C.12 Polychlorinated Biphenyls (PCBs) Controls

1. Compliance with PCB Load Reduction should be based on Implementation of Specified Control Measures (C.12.a)

As noted by Regional Board staff and Board members, the permit's numeric PCB reductions are based on uncertain, assumed load reductions for specific control measures which have not been sufficiently verified. Most of the BMPs evaluated during MRP 1 that were thought to achieve significant load reductions, such as enhanced street sweeping and drop inlet cleaning, and diversion of stormwater flows to sanitary sewers, turned out to have very limited load reduction benefits

In addition, the PCB load reductions are based on factors outside of the permittees control such as the number of building demolitions and the responsiveness of agencies to remediate identified properties. Basing compliance on activities outside of permittees' control does not provide jurisdictions with a clear path to compliance.

PCB load reductions are not required by the PCB TMDL. The TMDL Implementation Plan states that PCB reductions should be evaluated after 10 years (i.e., 2020). In 2020, after MRP 2 assessments have been completed, there will be a better understanding of what can be achieved through control measures and there will be updated load estimation methodologies. Load reduction targets could then be set at that time.

The Regional Board should modify the permit to require PCB reductions only within permittees control and with known, quantified benefit. If the 3.0 kg/yr performance criterion for the permit term is retained, it should be explicitly stated in the form of an action level to avoid any confusion between the permit's performance metrics and effluent limits; clarifying this legal definition has important implications for enforcement. Alternatively, the permit should be revised to clarify that any permittee showing good faith through implementation of specific actions (as determined by the Regional Board's Executive Officer) will be considered in compliance with the permit.

2. Extend Time Frame for Collecting, Documenting and Refining Load Reduction Estimates to April 1, 2017 (C.12.b)

The permit requires that permittees devote substantive time and resources to assess and verify reduction amounts for all pollution prevention and control measures. Specifically the permit states: "*develop, document, and implement assessment methodology and data collection program ...of any and all pollution prevention, source reduction, and treatment control efforts*" and report by April 1, 2016 and then regularly throughout the permit term. Program implementation takes time as does the measurement and assessment of the results. In addition, permittees will be coordinating within and

between counties on assessment methods and the accuracy of these assessments is critical.

General Comment on Reporting Requirements

Streamline Reporting Requirements and Require Reporting Every Other Year.

The amount of information required in the annual reports has grown substantially. Preparation of these reports requires City staff to devote approximately 2000 hours per year to maintain, collect and assemble the data necessary for reporting. Below are some specific recommendations on reporting requirements that are burdensome and may provide little information:

- Reporting on specific design elements for each C-3 project. Reporting requirements should be changed to require City to certify that all new development is C-3 compliant
- Reporting on device type, total acreage treated, and amount of acreage for each trash generation level for each full trash capture device both City-wide and again by TMAs. We recommend modifying the report to request information on newly installed devices only and only once in the document
- Permittees are required to report the dominant type of trash and the source of trash for each hot spot. These hot spots are at the bottom of watersheds draining thousands of acres. Repeatedly listing the sources draining to each hot spot is cumbersome and unnecessary. Studies and analyses already exist that characterize the dominant trash in our waterways. Asking permittees to collect and provide this information when it already exists diverts resources
- Permit requires annual reporting on the implementation and evaluation of trash and PCB control measures. We recommend a biennial reporting period (every other year) with a portion of the permittees reporting each year. This would allow a more thorough assessment by the RWQCB and give permittees more time to analyze and evaluate their control measures
- We recommend that the RWQCB staff initiate a workgroup with permittees to identify opportunities to eliminate unnecessary reporting.

We urge the Regional Board to modify the permit to allow us to work together towards sustainable, quality of life water quality improvements by incentivizing important programs, basing compliance on proven methodologies and providing achievable timeframes.

Sincerely,



Lesley Estes, Manager
Watershed and Stormwater

cc:

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