



PUBLIC WORKS

CITY OF
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July 10, 2015

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

**Subject: Comments from the City of Palo Alto on the Municipal Regional Permit (MRP)
Tentative Order - May 11, 2015**

Dear Mr. Wolfe:

Thank you for the opportunity to submit comments on the San Francisco Bay Regional Water Quality Control Board's Municipal Regional Permit (MRP or Permit) Tentative Order dated May 11, 2015. These comments incorporate by reference comments submitted by the Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP) as well as the Bay Area Stormwater Management Agencies Association (BASMAA).

The City of Palo Alto is proud of our significant environmental leadership, having installed one of the first structures to divert stormwater to the sanitary sewer and successfully completed a green street project during the current permit term. In addition, Palo Alto has been a leader on litter issues since 2002, including piloting trash booms in local creeks and implementing innovative multi-benefit programs, including the Downtown Streets Team. The City of Palo Alto's comments focus on the Green Infrastructure, mercury and PCBs, and trash provisions.

Green Infrastructure, Mercury and PCBs

The City of Palo Alto implemented one of the green infrastructure projects required by the current MRP and also operates the sanitary sewer diversion structure, which was analyzed during the current MRP for mercury and PCB reduction potential. The City has therefore gained insights into the timelines and resources needed to successfully implement these pollutant control measures. The City of Palo Alto believes that the Green Infrastructure, mercury and PCB requirements proposed in the Tentative Order present significant compliance challenges for the City and create a high degree of uncertainty in determining whether we will be deemed in compliance with the permit. We foresee the following barriers to achieving the requirements and improving water quality, which is our ultimate goal:

- The attainability of load reduction requirements for PCBs and mercury are based on a number of assumptions regarding the controllability of these pollutants. However, these assumptions are highly uncertain and many are not within the City's control. For example, the City is in the process of determining whether properties with high levels of PCBs exist, and hot spots are difficult to find and these pollutants are generally dispersed. Additionally, the City does not control the rate of redevelopment that may create the green infrastructure opportunities on private property. Lack of control with the rate at which controls are



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implemented on private property is a significant concern and does not provide us with a clear path to compliance with the permit.

- With regard to green infrastructure implementation, obtaining funding and receiving stakeholder input takes time and may not coincide with time schedules required by the permit. The implementation timelines in provisions C.3 and the mercury/PCB provisions are not aligned in the Tentative Order. The City's Southgate Neighborhood green street project timeline was more than three years:
 - RFP process (September 2011) and hiring consultant (November 2011)
 - Three community meetings February to July 2012
 - Final design community meeting September 2013, then implementation
 - Completion in late 2014

In summary, the City of Palo Alto's goal is to protect and improve water quality in the creeks and Bay, however, Permittees need to have realistic time frames and a higher level of certainty that sincere efforts to make a difference, which may fall short of achieving the load reduction goals in the Tentative Order, will not put their agency in a compliance limbo. The currently proposed requirements based on load reduction performance criteria create a high level of uncertainty as to whether the City will be deemed in compliance with the permit, regardless of the level of effort put into the control of these legacy pollutants. Compliance should be based upon implementing control programs designed to achieve load reduction action levels within realistic timeframes rather than achieving specific load reductions.

In terms of the requirement for addressing PCBs during the demolition of older buildings, we strongly urge the Water Board to 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 abatement of asbestos and lead paint. This would create a more efficient, effective, and consistent program rather than individual municipalities passing ordinances. We believe that USEPA should play a lead role in development of this program.

Trash

The City of Palo Alto has been a leader in implementing source controls for litter. Palo Alto was one of the first municipalities to ban single-use plastic check-out bags at grocery stores in 2008 and expanded its ordinance in 2013 to include all retail and restaurants following the preparation of an Environmental Impact Report. Palo Alto was also one of the first municipalities to ban expanded polystyrene or non-recyclable plastic at food vendors (adopted in 2009 and in effect 2010). The polystyrene ordinance is currently being expanded to include bans on the sale of polystyrene products. Each of these actions required extensive staff time for environmental review, public meetings, stakeholder interactions, and Council meetings. The City has collected extensive data on the positive impacts of these ordinances. In summary:

- Polystyrene:
 - Compliance verification data for the expanded polystyrene ordinance as part of regular food service establishment inspections: Initial surveys in 2010 of all food service establishments showed 95% compliance. Since then routine inspections and complaints have ranged from 0 to 2 per year.
 - Creek clean up events starting in 2012 tallied Styrofoam foodware vs. packaging. The foodware percentage is low and trending down.

- Plastic Bags:
 - Store Exit Surveys: staff has performed annual surveys at grocery stores and pharmacies since 2008 by observing customers exiting the stores. 76% of customers at pharmacies and large grocery stores now use reusable bags or no bags when making their purchases; none use single-use plastic bags. This shift away from paper exceeds the expectations from the EIR.
 - Large Retailer (10,000 square feet and greater) compliance audit: one hundred percent of large retail stores are in compliance by not distributing single-use plastic bags and charging for paper and reusable bags.
 - Small Retail and Food Service Establishment compliance checks: Staff estimates that 88% of small retailers and 82% of food service establishments are currently in compliance with the ordinance. Staff is working with the noncompliant retailers and food service establishments. Please note that restaurant bag restrictions went into effect in November 2013, about six months after the retail restrictions.
 - Trash Boom, Creek Clean Up and On-land data: Bag litter has decreased significantly in creeks and on land with bag data tracked separately for creek clean ups and trash removed from booms installed across local creeks. A comparison of litter counts at the Matadero Creek clean up events between 2014 and 2012 shows an 85% reduction in total plastic check-out bag litter. Field observations of bags on land show a 90% reduction in bag litter when compared with a pre-ordinance count in 2013.

In the 2014/15 annual report, the City of Palo Alto claimed trash reductions of 7% for the single-use bag ordinance and 5% for the polystyrene ordinance based on compliance and environmental data for a total of 12%. The City plans additional source control actions, including the expansion of the expanded polystyrene ban, and is concerned that not receiving adequate value from such actions will make it difficult to obtain funding and support. The City of Palo Alto requests that the maximum of 5% reduction for all source control actions currently allowed in the Tentative Order be increased to account for the significant environmental benefits derived from these actions. On-land visual observations do not capture the entirety of these reductions, because they are only precise enough to detect reductions greater than 25 percent. Consistent with SCVURPPP, the City of Palo Alto requests that all source control actions combined have a maximum trash load reduction of up to 25%, provided that Permittees have supporting data for any reductions associated with source controls.

The City of Palo Alto would like to thank Water Board staff for their attention to previously submitted comments and input by Permittees. We appreciate your consideration of these comments and look forward to your response.

Sincerely,



Phil Bobel, Assistant Director
Environmental Services – Public Works
City of Palo Alto