

City of San Leandro

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December 18, 2015

Email: waterqualitypetitions@waterboards.ca.gov; Philip.Wyels@waterboards.ca.gov

State Water Resources Control Board
Office of Chief Counsel
Attn: Adrianna M. Crawl
P.O. Box 100
Sacramento, CA 95812-0100

RE: PETITION OF THE CITY OF SAN LEANDRO FOR REVIEW OF WASTE DISCHARGE REQUIREMENTS ORDER NO. R2-2015-0049 (NPDES PERMIT CAS612008) FOR DISCHARGES OF MS4s IN THE SAN FRANCISCO BAY REGION - THE SAN FRANCISCO BAY MUNICIPAL REGIONAL STORMWATER NPDES PERMIT (MRP 2.0)

To Whom It May Concern;

The City of San Leandro hereby submits this Petition for Review to the California State Water Resources Control Board ("State Board") pursuant to section 13320(a) of the California Water Code (the "Water Code"), requesting that the State Water Board review an action by the California Regional Water Quality Control Board, San Francisco Bay Region ("Regional Board"). Petitioner is not seeking immediate review of this Petition and instead requests that it be held in abeyance pending further notice by Petitioner to the State Board in the event that Petitioner wishes to request that the review process be activated.

MRP 2.0 includes as co-permittees 76 San Francisco Bay Area municipalities that collectively serve over 5.5 million people in the Bay Area.

Name, address, telephone number and e-mail address of the petitioner.

City of San Leandro
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Pauline Russo Cutter, Mayor

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Deborah Cox
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¹
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The action or inaction of the Regional Board being petitioned, including a copy of the action being challenged, if available.

Petitioner seeks review of the Regional Board’s November 19, 2015 Municipal Regional Stormwater Permit Order No. R2-2015-0049, reissuing NPDES Permit No. CAS612008 (the “MRP 2.0”)¹

An official, clean copy, unified version of MRP 2.0 as adopted is available for download at http://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/stormwater/Municipal/index.shtml

The following additional documents, which modified the revised Tentative Order and were adopted as part of MRP 2.0, and which present issues raised for review herein include: (1) a “Staff Supplemental” first made available to the public at the hearing location just prior to the beginning of the Regional Board’s meeting on November 18, 2015 (See Attachment B); (2) a “Chair’s Supplemental” which the Chair of Regional Board first revealed and made available to those present at the adoption hearing only after the agenda item in question commenced on November 18, 2015 (See Attachment C); and (3) the Regional Board staff’s Response to Comments document on the May 11, 2015 Tentative Order, Provision C.11 and C12. – Mercury and PCBs (available for download at http://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/stormwater/Municipal/mrspresponsetocomments/C11-12_Response_to_Comments.pdf), because it is the first time in the record the Regional Board staff characterized the “numeric performance criteria” for mercury and PCB load reductions set forth in MRP 2.0 and its fact sheet as numeric effluent limitations (“NELs”) rather than numeric action levels (“NALs”).

Collectively, all of the above documents are further referred to herein as “Final MRP 2.0 Order.”

The date the Regional Board acted.

The Regional Board adopted Order No. R2-2015-0049 on November 19, 2015.

Statement of the reasons the action or inaction was inappropriate or improper.

- After nearly three years of preparation by Regional Board staff, and work by permittees and other stakeholders, in the course of the June 10th and July 8th workshop hearings and again at the adoption hearing on November 18/19th, the Regional Board cut short Petitioner’s rights to meaningful public participation in the permitting process and did not comply with basic and required public participation and fair hearing requirements.
- Visual Assessment of Trash Load Reduction Outcomes - There is a lack of technical documentation in the record that demonstrates that the visual assessment protocol contained in the Trash Load Provision is an accurate and reliable method for determining

¹ As the Order and its attachments are 350 pages, a hardcopy is not being provided concurrently with this Petition but will be provided to the State Water Board upon its further request should that be deemed necessary.

compliance and is, therefore, inappropriate and improper. See Provision C.10.b. of MRP 2.0.

- Trash Load Reduction Receiving Water Monitoring – There is a lack of documentation in the record that demonstrates that the receiving water monitoring requirements contained in the Trash Load Provision are appropriate and proper to effectively monitor trash load reduction. See Provision C.10.b.v. of MRP 2.0.
- Achievement of Mercury and PCB Load Reductions – Adequate information is not available and was not presented in the record as to how the permittees will be able to fully achieve Mercury and PCB load reductions. Furthermore, it was arbitrary and capricious and an abuse of discretion to designate the Mercury and PCB load reduction requirements as NELs – they should instead be characterized as NALs. See Provisions C.11.a. and 12.a. of MRP 2.0.
- The Regional Board’s assertion that the requirements of MRP 2.0 are necessary to reduce the discharge of pollutants to the maximum extent practicable (“MEP”) standard set forth in the federal Clean Water Act and its implementing regulations is not sufficiently supported by findings.
- Indeed, some of the MRP requirements exceed the federal MEP standard, thereby triggering legal obligations for the Regional Board to conduct additional analysis of technical feasibility and economic and environmental impacts under section 13241 of the California Water Code, none of which were adequately performed before adoption of MRP 2.0.

How the petitioner is aggrieved.

Petitioner is one of 76 cities, towns, counties and other public Bay Area entities subject to MRP 2.0. As such, it is aggrieved by the procedural and substantive legal defects in the MRP 2.0 described in this petition.

Petitioner has been unfairly deprived of its full public participation rights in MRP 2.0 that are legally required by federal and state law. Had inappropriate public participation not occurred and a full and fair hearing process been effectively followed, the numeric performance criteria for Mercury and PCBs load reductions would not have been characterized or be legally enforceable as NELs, and Trash Load Reduction visual assessment and receiving water monitoring would have been more reasonable and appropriate. Petitioner and its co-permittees would then have been able to ensure compliance with MRP 2.0 through implementing required initial and follow-up actions on a timely basis, and not be subject to third-party lawsuits if Trash Load Reduction, Mercury and PCBs loading reductions fall short of their non-transparently calculated and speculative marks.

The action the petitioner requests the State Board to take.

These defects render the MRP 2.0 inappropriate and invalid and require further action by the State Board pursuant to its authority under Water Code section 13320(c).

- The State Board should conduct further public hearings on MRP 2.0 to provide the proper and fair process and absence of bias to which the Petitioners and all members of the public are entitled.

- The adoption of NELs for Mercury and PCB load reductions is not legally supported. As part of this process, and as it did in the Construction and Industrial General Stormwater permits it has adopted, the State Board should convert the numeric performance criteria for Mercury and PCBs set forth in Provisions C.11 and C.12 of MRP 2.0 from NELs into NALs with an accompanying set of appropriate exceedance response action requirements (ERAs) if these benchmarks are not met in the first instance. There is even more reason for the State Board to utilize NALs here. Unlike in this Clean Water Act section 402(p)(3) MS4 permit, NPDES stormwater permits for construction and industrial activities *must* address the less flexible requirements of Clean Water Act section 301(b)(1)(C).
- The State Board should adopt legally sufficient findings demonstrating that MRP 2.0 and its requirements do not exceed the MEP standard.
- The State Board should analyze the cost of compliance and technical feasibility of the requirements of MRP 2.0 in accordance with Water Code section 13241.
- If the State Board chooses to not conduct the foregoing requested relief, then in the alternative, it should issue an order remanding MRP 2.0 to the Regional Board that requires the Regional Board to comply with all of the above.
- The State Board should provide for such other and further relief as is just and proper as may be requested by the Petitioner and other permittees.

Statement of points and authorities.

See Attachment A to this letter.²

Statement that copies of the petition have been sent to the Regional Board.

Copies of this Petition have been provided to the Regional Water Board.

Statement that the issues raised in the petition were presented to the Regional Board before the Board acted.

All the issues raised in this petition were presented to the Regional Board before this permit was adopted on November 19, 2015 as indicated in this petition, the attachments to this petition, and as will be reflected in the record to be assembled.³

IN CONCLUSION the City of San Leandro wishes to note that the vast majority of MRP 2.0 was not the subject of significant dispute and is a tribute to cooperation between it and its fellow municipal stormwater programs in the San Francisco Bay Area and the Regional Board staff. The City of San Leandro raises the issues in this Petition to ensure an improved, more transparent and publicly legitimate permit will be put in place that avoids the prospect of resource consuming litigation and allows for cooperation and creative approaches to continue to

² Petitioner reserves the right to supplement this Statement of Points and Authorities if this Petition is taken out of abeyance and once the record has been assembled.

³ Petitioner reserves the right to supplement and expand upon this Petition if it is taken out of abeyance and once the record had been assembled.

make meaningful and substantial progress on the highest priority water quality issues in the Bay Area.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "R. Roda", written over a horizontal line.

Richard Pio Roda
City Attorney
City of San Leandro

cc Bruce Wolfe, Regional Board Executive Officer

Attachments A, B, C, & D

ATTACHMENT A

STATEMENT OF POINTS AND AUTHORITIES

PETITION OF THE CITY OF SAN LEANDRO FOR REVIEW OF WASTE DISCHARGE REQUIREMENTS ORDER NO. R2-2015-0049 (NPDES PERMIT CAS612008) FOR DISCHARGES OF MS4s IN THE SAN FRANCISCO BAY REGION - THE SAN FRANCISCO BAY MUNICIPAL REGIONAL STORMWATER NPDES PERMIT (MRP 2.0)

I) General Factual and Procedural Background

A. Federal and State Statutory Scheme

The discharge of pollutants in storm water is governed by Clean Water Act Section 402(p), which governs permits issued pursuant to the National Pollutant Discharge Elimination System (“NPDES”). (33 U.S.C. § 1342(p).) With respect to a municipality’s discharge of storm water from a municipal separate storm sewer system (“MS4”), Section 402(p)(3)(B) provides:

Permits for discharges from municipal storm sewers –

- (i) may be issued on a system or jurisdiction-wide basis;
- (ii) shall include a requirement to effectively prohibit non-storm water discharges into the storm sewers; and
- (iii) shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.

(33 U.S.C. § 1342(p)(3)(B).)

California is among the states that are authorized to implement the NPDES permit program. (33 U.S.C. § 1342(b).) California’s implementing provisions are found in the Porter-Cologne Water Quality Control Act. (*See* Water Code §§ 13160 and 13370 *et seq.*) Respondent State Water Board is designated as the state water pollution control agency for all purposes

stated in the Clean Water Act. (Water Code § 13160.)¹ State and Regional Water Boards are authorized to issue NPDES permits. (Water Code § 13377.) NPDES permits are issued for terms not to exceed five years. (*Id.* § 13378 (“Such requirements or permits shall be adopted for a fixed term not to exceed five years.”).)

Thus, when a Regional Water Board issues a NPDES permit, it is implementing both federal and state law. Permits issued by a Regional Water Board must impose conditions that are at least as stringent as those required under the federal act. (33 U.S.C. § 1371; Water Code § 13377.) But, relying on its state law authority or discretion, a Regional Water Board may also impose permit limits or conditions in excess of those required under the federal statute as “necessary to implement water quality control plans, or for the protection of beneficial uses, or to prevent nuisance.” (Water Code § 13377.)

The Water Code requires the Regional Water Board, when issuing NPDES permits, to implement “any relevant water quality control plans that have been adopted, and shall take into consideration the beneficial uses to be protected, the water quality objectives reasonably required for that purpose, other waste discharges, the need to prevent nuisance, and the provisions of Section 13241.” Water Code § 13263(a). Section 13241 requires the consideration of a number of factors, including technical feasibility and economic considerations. (*Id.* § 13241.)

B. Public Participation Procedural Requirements

NPDES permits may be issued only “after opportunity for public hearing.” (33 U.S.C. § 1342(a)(1).) Indeed, public participation is a fundamental —and non-discretionary— component of issuing a NPDES permit:

Public participation in the development, revision, and enforcement of any regulation, standard, effluent limitation, plan, or program established by the Administrator or any State under this Act shall

¹ Water Code Sections 13160 and 13370 et seq. reference the Federal Water Pollution Control Act. After the Federal Water Pollution Control Act was amended, it commonly became known as the Clean Water Act.

be provided for, encouraged, and assisted by the Administrator and the States.

(33 U.S.C. § 1251(e) (emphasis added).) Thus, among other things, federal regulations require a state permitting agency to provide at least 30 days for public comment on a draft NPDES permit. (40 C.F.R. § 124.10(b)(1).) This is particularly critical for a permit such as the MRP 2.0 that has taken so long in its development and applies to so many co-Permittees.

The federal regulations also require at least 30 days advance notice of a public hearing on adoption of a draft NPDES permit. (*Id.* § 124.10(b)(2).) Adjudicative hearings held by the Regional Water Board in consideration of an NPDES permit are governed by the Regional Water Board's own regulations, 23 Cal. Code Reg. § 648 et. seq., Chapter 4.5 of the Administrative Procedure Act (commencing with § 11400 of the Government Code), sections 801-805 of the Evidence Code, and section 11513 of the Government Code. (*See* Cal. Code Regs., tit. 23, § 648(b).) Government Code § 11513 provides that each party shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine opposing witnesses on any matter relevant to the issues even though the matter was not covered in direct examination, to impeach any witness, and to rebut the evidence against the party. (Government Code § 11513(b).) The Regional Water Board's procedural regulations also establish the right of a party in an adjudicative hearing before the Regional Water Board to present evidence and cross-examine witnesses. (Cal. Code Regs, tit. 23, § 648.5(a).)

Thus, full and meaningful public participation in the NPDES permit process, especially at the hearing and adoption stages, is fundamental to the permitting process.

II. Argument

- A. **The Regional Board's adoption of the final MRP 2.0 was procedurally defective in that it did not comply with basic federal and state public participation and fair hearing legal requirements.**

The MRP 2.0 is the culmination of nearly three years of resource intensive work by the Regional Board, Permittees, and stakeholders. The process has been iterative, and the Regional Board has established a pattern of allowing time between work product iterations to facilitate public participation. Considerable discussions and meetings were held with Permittees and other stakeholders prior to the circulation of formal written documents. Prior to and after circulation of the written documents, Steering Committee meetings were often held monthly to encourage staff, and permittee dialogue. The administrative draft permit (Provisions C.2-C.15) was first circulated for public discussion on February 2, 2015. This was followed by publication of a Tentative Order on May 1, 2015 that included the Order, Attachments A-G, and a Summary of Changes to the administrative draft. At that time, a Notice of Public Workshop Hearings and of a Public Comment Period was circulated. The noticed Revised Tentative Order Workshop Hearings were scheduled for June 10 and July 8, 2015. At each of these preliminary stages of the permitting process, the Regional Board provided sufficient notice and solicited public comment on revisions from the prior draft in keeping with the public participation requirements in the federal statute and regulations. (33 U.S.C. § 1251(e); 40 C.F.R § 124.10(b)(2).)

However, at the critical final stages leading to permit adoption following the May 1, 2015 Notice of Public Workshop Hearings and of a Public Comment Period, the Regional Board departed from its prior efforts to provide for meaningful public participation and fair hearing process. As more fully described below, the Regional Board proceeded to ignore the State Water Board directives and statutory mandate with regard to the permit fair hearing process. As a result, Permittees have been denied the right to full and fair participation in the permitting process, as required under both federal and state law. (33 U.S.C. § 1351(e); *Bellflower*, WQ

2000-11.) It should not be overlooked that these requirements apply to 76 Permittees in the San Francisco Bay Region that in itself provides for very complex and controversial issues.

1. The June 10 workshop hearing was inappropriately conducted as a Subcommittee meeting.

At the June 10 Regional Board workshop hearing that was scheduled to hear comments on all permit provisions except for Provisions C.10 relating to Trash Load Reduction, the Regional Board failed to have a quorum present to consider the evidence and instead proceeded as a Subcommittee of only three Board Members (Transcript of June 10 Hearing (hereinafter “Tr.”) at pp.7-25). The June 10 workshop hearing was neither noticed as a Board Subcommittee meeting nor was the possibility of a Subcommittee referenced in the meeting agenda. Only three Board members heard the public testimony on all permit provisions, except for the Provision C.10 Trash Load Reduction requirements and, thus, deprived Permittees the opportunity to address all Board members on most of the critical permit issues raised at the permit hearing.

2. The recusals of two Board members from participation in the MRP 2.0 hearing process was inappropriate and improper.

The failure of the Regional Board to have a quorum at the noticed June 10 workshop hearing was in part due to the two Board members with significant service and experience in municipal government, Board members Muller and Abe Koga, recusing themselves from participation in the MRP 2.0 hearing and adoption process.

On July 8, 2015, the Regional Board held the second workshop hearing to consider public comments on Provision C.10 Trash Load Reduction. At that workshop hearing, Board member Abe-Kobe recused herself from participating stating that, although she had no financial conflict of interest under the Political Reform Act, she was recusing herself “to avoid an appearance of

bias.”² Then at the November 18 permit adoption hearing, Board member Muller announced that he was also recusing himself from participation in “order to avoid any appearance of bias” due to his relationship to one of the Permittees in the MRP 2.0 hearing and adoption process.³ Board member Abe-Kobe restated her recusal at that time as well. Consequently, the two Regional Board members with significant municipal government service and experience did not participate in the MRP 2.0 hearing and adoption process, despite having no financial conflicts under the Political Reform Act.

At the November 18 hearing, Mr. Matt Fabry, Chair of BASMAA, expressed disappointment on behalf of all BASMAA agencies with the recusals of two Board members with municipal government experience.⁴ Given their municipal experience, participation in the Board’s deliberations on MRP 2.0 by these two additional Board members could have brought important diverse perspectives and practical insights into the Region Board’s consideration of MRP 2.0’s requirements and influenced the final vote. These two recusals resulted in a less diverse and representative Regional Board.

3. The failure of the Regional Board to disclose the content of emails that were exchanged between Board members was inappropriate and improper.

During the July 8 workshop hearing on Trash Load Reduction permit issues, Chair Young stated that two of the Subcommittee members had exchanged emails, but the content of

² July 8 Tr.p.6&7

³ November 18 Tr.p.6

⁴ November 18 Tr.p.132.

those emails was not disclosed in the public record.⁵ Thus, Permittees were deprived of knowing the content of some of the information considered by Regional Board members.

4. At the July 8 workshop hearing and at the November 18 permit adoption hearing, Regional Board members inappropriately stated their tentative conclusions on Trash Load Reduction requirements prior to receiving public testimony.

At the commencement of the July 8 workshop hearing, the Subcommittee members Young and Lefkowitz, plus Board member McGrath—who stated that he had read the June 10th hearing transcript—provided Subcommittee comments on issues from the June 10 Subcommittee workshop hearing.⁶ The third member of the Subcommittee, who may have brought a different perspective on the same testimony to the discussion, did not participate in these communications or otherwise have input into the Subcommittee’s report and recommendations, nor was she present when the Subcommittee’s report and recommendations were presented to the Board at a hearing on July 8.

The Board then moved on to Trash Load Reduction, Provision C.10. The deadline for submission of written comments on all permit issues including trash was July 10. Therefore, as of the July 8 workshop hearing, Regional Board members had not yet had any opportunity to review any permittee or other stakeholder written comments or listen to hearing testimony relating to trash load reduction. Despite this lack of public input, and after the Regional Board staff had made their presentation in support of the Trash Load Reduction May 11 Tentative

⁵ July 8 Tr., p.18.

⁶ It should be noted that Board member Kissinger who was in attendance at the July 8th workshop hearing, but not the June 10 workshop hearing, did not state that he had read the June 10th workshop hearing transcript. It should also be noted that Board member Ajami, who did not attend the July 8th workshop hearing, has not stated in the record that she has read the transcript of that proceeding.

Order, Chair Young announced that prior to public testimony on Trash Load Reduction provisions, the Regional Board members would state their “tentative thinking” (July 8 Tr., p.41, lines 1-2).⁷ Based on the Board members “many quizzical expressions,” Chair Young first provided her tentative thinking (July 8 Tr., p.41, lines 2-3). Regional Board members then, without the benefit of any public input in the process, provided their lengthy “tentative thinking.” Consequently, after the staff presentation and Board member statements of their tentative thinking on the Trash Load Reduction provisions, the impression was created with many Permittees that the Board members had basically made up their minds without hearing from the Permittees and other stakeholders.

Then again at the November 18 permit adoption hearing, following the Board staff presentation, the Board stated their tentative opinions on all requirements in the permit, prior to hearing any public testimony from Permittees and other stakeholders. This again had a chilling effect on the public testimony that followed.

5. At the November 18/19 permit adoption hearing, the Regional Board inappropriately considered written Staff Supplemental revisions and Chair Young’s Supplemental revisions.

On November 10, the Regional Water Board published a new “Revised Tentative Order” for reissuance of the MRP 2.0, to be proposed for adoption by the full Regional Water Board at its regularly scheduled November 18/19 meeting. This also included a List of Errata Corrections and Clarifications as well as revised Appendices A-G which included the Fact Sheet. Permittees had only eight days to consider these late revisions.

⁷ July 8 Tr.pp.14-56.

At the November 18/19 permit adoption hearing, the Regional Board commenced their final consideration of MRP 2.0. The Regional Board’s October 19 Notice of Public Hearing to Consider Adoption of MRP 2.0 clearly stated that participants were “encouraged” to limit testimony to revisions to the Revised Tentative Order, and that the Board “will not accept any additional written comments.” Permittees followed this directive regarding additional written comments. Despite this directive, on the morning of the November 18 hearing, the Regional Board staff passed out yet another new written Staff Supplement document that significantly increased the frequency of visual trash assessments in the Trash Load Reduction provision of the permit. See Attachment B.

Furthermore, during the course of hearing testimony on November 18, Chair Young also introduced a new written two-page Supplemental containing significant revisions to the Trash Load Reduction receiving water monitoring requirements.⁸ See Attachment C. Both of these late-written revision submissions of burdensome and substantive revisions introduced by Board staff and Chair Young not only were contrary to the Hearing Notice directive of no additional written comments, but most importantly did not provide the opportunity for Permittees to adequately consider these significant changes and provide appropriate comments to the Board.

Objections were made by several commenters to Board consideration of these two supplemental revisions. See the comments of Gary Grimm, legal counsel for the Alameda Countywide Clean Water Program.⁹

There is no dispute that the Staff Supplemental and the Supplemental revisions introduced by Chair Young contained substantive changes from the Revised Tentative Order that

⁸ November 18 Tr.p.54

⁹ November 18 Tr.p.253-4

were the subject of the Regional Board’s November 18/19 hearing, or that the changes will result in additional costs and burdens on Permittees. The Regional Water Board’s statement that these revisions were the “outgrowth of comments” submitted by Permittees and other interested persons is not accurate, is an oversimplification of the changes, and does not justify the lack of opportunity to allow written comments on these substantive revisions. Witnesses who appeared on behalf of Permittees objected to the imposition of these costly, burdensome and inflexible new provisions being added so late in the process and without the opportunity to provide more detailed comments, and testified to the lack of available public resources to fund them.

Moreover, even if these Supplementals really only contained clarifications, at the very minimum, the public should have received notice of them at least 10 days prior to the hearing in order to have a real and meaningful opportunity to review and prepare testimony on their implications. While the Regional Board staff was allowed to reply to all hearing comments with no time limit at the hearing on November 19th once public testimony was concluded, and was questioned by the members of the Regional Board, no additional time was allotted for Permittees to question staff directly or to submit additional evidence in response to staff conclusions on the supplemental material.

6. **The Board did not provide requisite notice to the public that “numeric performance criteria” for mercury and PCBs loading reduction contained in MRP 2.0 were intended as Numeric Effluent Limits (“NELs”) rather than Numeric Action Levers (“NALs”) until they released their Response to Comments document on October 19 in conjunction with the permit adoption hearing.**

The ambiguous nature of the term “numeric performance criteria” in the draft permit and its fact sheet resulted in extensive testimony at the June 10, 2015 hearing on the non-trash-related

requirements and generated an associated formal request for clarification in terms of the NEL vs. NAL distinction in written comments which followed on July 9, 2015. The Regional Board then released its Response to Comments document on October 19, in which the Regional Board staff surprised Permittees with a substantive change as to how the “numeric performance criteria” were to be treated, as NELs instead of NALs. See Attachment D. Hence, as a practical matter, the Response to Comments document’s first time insistence that the numeric performance criteria were NELs and not action-based requirements thereupon created the potential for Permittees to face significant third party liability and mandatory minimum penalty consequences in the event they are unable to fully comply with the NELs. As such, this substantial and far-reaching change should have resulted in a re-opening of the written public comment period to allow Petitioner and the Permittees to have a real and meaningful opportunity to submit written comments on the implications of NELs.

7. Following the public testimony at the permit adoption hearing on November 19, the Regional Board inappropriately conducted lengthy deliberations in closed session.

Final deliberations of the Regional Board members at the adoption hearing on November 19 concerning their resolution of key contested issues (including issues concerning the imposition of NELs rather than NALs for mercury and PCBs) occurred in a lengthy, 1 hour and 45 minute closed session that was also insufficiently noticed and which was otherwise unauthorized even in the context of an adjudicative proceeding of this nature.¹⁰ This precluded

¹⁰ The Board meeting agenda does not provide notice of a closed session in conjunction with its specified item on MRP 2.0 (Item 7). Instead, Agenda Item 11 just contains a boilerplate reference to a closed session for “Deliberation,” the authority referenced for which is Government Code section 11126(c)(3). There is also a further explanatory note contained in a boilerplate attachment to the Agenda that explains that the Board may adjourn to a closed session at any time during the regular session to, among other things, deliberate, based on the authority provided by “Government Code section 11126(a), (d) and (q).” Putting aside for a moment the question of whether any of these statutory references provide authorization for a closed session in these circumstances, what they clearly

direct observation by, and full accountability to, members of the public, as both the spirit and the letter of the Bagley-Keene Act demand.

With regard to the above seven cumulative arguments relating to lack of fair hearing and lack of adequate opportunity for public participation, under circumstances similar in some ways to those described above, the State Board has previously expressed concern that this type of process was insufficient to assure that all participants were allowed an adequate opportunity to be heard:

But we are concerned that at the . . . hearing, interested persons and Permittees were not given adequate time to review late revisions or to comment on them. Given the intense interest in this issue, the Regional Water Board should have diverged from its strict rule limiting individual speakers to three minutes and conducted a more formal process. Such a process should provide adequate time for comment, including continuances where appropriate.

do not do is override Government Code section 11125(b)'s independent requirement to provide clear advanced notice to the public of "an item" to be discussed in closed session.

Moreover, in terms of providing authorization for a closed session on the MRP 2.0 adoption item, these references are either inapposite or non-existent. Even Government Code 11126(c)(3) extends only to deliberations on proceedings conducted pursuant to Government Code section 11500 or similar provisions of law. But Section 11500 *et seq.* concerns only proceedings conducted by administrative law judges and, to the extent Government Code section 11400 *et seq.* is considered similar, its general rule is that even an adjudicative hearing "shall be open to public observation" and may only be closed for certain limited purposes, none of which presented themselves here. *See* Cal. Gov. Code §§ 11425.10(a)(3) and 11425.20(a)(1)-(3). Government Code section 11126(e), which was *not* referenced on the Agenda, also does not apply here since there is no significant exposure to litigation against Region 2 and, in any event, Region 2's counsel did not timely prepare and submit the requisite memorandum detailing the specific reasons and legal authority for closing the session on this basis. *See* Cal. Gov. Code 11126(e)(1), (e)(2), and (e)(2)(B) and (C)(ii).

Finally, even if the above were not the case, the transcript of the open hearing reveals that the closed session's purpose was not deliberating evidence but rather, ultimately without apparent success, for the Board members to try and craft new permit language to resolve the NEL v. NAL issue in a manner addressing the co-Permittees concerns. RT-Nov19 at 160:7-161:2. (As has been observed relative to general permits issued in California, the line between adjudicative and quasi-legislative action and associated procedural rules governing the board members blurs in a proceeding to develop a single set of requirements governing a large number of co-Permittees, like the 76 present here such that erring on the side of transparency concerning the Region 2 Board members' decision-making is in order relative to this closed session issue.)

(*In re The Cities of Bellflower et al.*, State Water Board Order WQ 2000-11, at *24 (Oct. 5, 2000) (emphasis added).) In the *Bellflower* case, the State Water Board admonished Regional Water Boards to employ the proceedings for hearings set forth in section 648 of the Regional Board's regulations. (*Id.* at *24 n.25 (“For future adjudicative proceedings that are highly controversial or involve complex factual or legal issues, we encourage regional water boards to follow the procedures for formal hearings set forth in Cal. Code of Regs., tit. 23, section 648 et seq.”).) Those regulations require the Regional Water Board to allow interested parties the opportunity to present contrary evidence. (Cal. Code Regs, tit. 23, § 648.5(a).)

B. Visual Assessment Requirements of Trash Load Reduction Outcomes are Unreasonable, Inappropriate, and Legally Defective.

There is a lack of documentation in the record that demonstrates that the visual assessment protocol contained in the Trash Load Reduction Control Provision C.10 is an accurate and reliable method for determining compliance with the permit's trash load reduction requirements. See Provision C.10.b.ii.b. To the contrary, the prescribed methodology that was proposed in the Revised Tentative Order and that was included in the final permit adds burdensome permittee expense to conduct an unreliable methodology. Lesley Estes of the City of Oakland provided specific examples in her testimony of their experience of why visual assessments is a very expensive way to achieve non-meaningful results and does not effectively address trash cleanup.¹¹

In addition to the inappropriateness of the Revised Tentative Order visual assessment methodology, at the beginning of the hearing, and contrary to the rules of the hearing as set forth in the Notice of Hearing, Board staff introduced a written Supplemental sheet that, among other

¹¹ Nov 18 Tr.p.216

things, further significantly revised the requirements and purports to clarify information in the Fact Sheet on frequency of visual assessments in Provision C.10.b.ii.b.(i-iv). These revisions will result in a significant increase of the frequency of required visual assessment for some areas. Although the Permittees were not able to adequately consider and respond to these late revisions, Board staff was allowed to fully explain and comment on the public testimony for these revisions.

Despite the time limitations to consider these revisions, Mr. Phil Bobel of the City of Palo Alto testified that his quick estimate of the trash visual assessment revisions proposed in the staff Supplement would triple their visual assessments, and that this revision caught them off-guard.¹² Ms. Melody Tovar of the City of Sunnyvale commented that she agreed with Mr. Bobel's comments that the increased visual trash assessment Supplemental revisions simply add more cost without benefit.¹³ Finally, Ms. Leah Goldberg, Senior Deputy City Attorney for the City of San Jose, testified that they had only briefly considered the Supplemental revision and urged the Board not to adopt the revisions.¹⁴

Staff member Mumley added further uncertainty to this discussion by stating that the revisions to the Fact Sheet on visual assessments are not directly enforceable, are intended as guidance only, are not a substantial change, and that the numbers are a guide and not mandatory.¹⁵ This statement is questionable and gives Permittees little comfort given the risk of

¹² Nov 18 Tr.p.156

¹³ Nov 18 Tr.p.175-6

¹⁴ Nov 18 Tr.p.226

¹⁵ Nov 19 Tr.pp118-120.

third party liability and that Finding 1 of the Revised Tentative Order incorporates the Fact Sheet by reference.

C. The Provision C.10 Trash Reduction Outcomes Receiving Water Monitoring Provisions, the Development and Testing Plan, and Reporting Requirement Revisions Introduced by Chair Young at the November 18 Hearing are Inappropriate and Improper.

As previously referenced, two pages of significant written revisions to Trash Reduction Outcomes requirements were introduced during the course of the November 18 hearing by Chair Young. This was contrary to the rules for written comments provided in the Hearing Notice and did not afford Permittees and other members of the public sufficient opportunity to review and comment on the revisions.

As a consequence of this procedural error, the hearing record contains relatively little information on the issues presented by the Provision C.10.b.v. and C.10.f., revisions that required a specific receiving water monitoring proposed program to be approved by the Executive Officer, rather than developing water monitoring tools and protocols. There was simply not sufficient time for Permittees to review, discuss, and comment on these revisions. Provisions C.10.b.v.a. and C.10.f are inappropriate revisions in that they require Permittees to submit a plan to develop and test a receiving water monitoring program containing new criteria not previously considered, rather than a plan to develop tools and protocols; and similar changes to Provisions C.10.b.v.b and C.10.f Reporting. This is a substantial receiving water monitoring change.

D. The inclusion of NELs as opposed to NALs for Mercury and PCB Load Reduction Requirements Contained in Provisions C.11& C12 are Arbitrary and Capricious and an Abuse of Discretion.

1. **Regional Board Staff Did not Provide Requisite Notice that “Numeric Performance Criteria” Were Effectively NELs Instead of NALs.**

To further expand on the argument in Section II.A.6 above, the flaws in the public participation process have also deprived Petitioner and the Permittees of their rights to fully comprehend and comment on the Regional Board staff’s last-minute decision to characterize the “numeric performance criteria” for mercury and PCB loading reductions as NELs instead of NALs. Not until the Regional Board staff released their Response to Comments document on October 19, 2015, in conjunction with the announcement of the permit adoption hearing the following month, did the Regional Board staff reveal this material change to the public. (See Attachment D.) In so doing, the Regional Board staff introduced significant third party liability to the equation, as well as liability for mandatory minimum penalties assessed under Water Code section 13385, if the Petitioner and the Permittees are unable to comply with the NELs. Petitioner was deprived of requisite notice to comment on this material change, which occurred after Petitioner submitted comments on the May 11, 2015 Tentative Order, and after the Regional Board had confirmed that the requirements in MRP 2.0 were best management practices (BMP) and other required action-based measures, consistent with their TMDL implementation plans, and that good faith compliance with them would create a safe harbor for the co-Permittees.

At the adoption hearing in November, Regional Board staff and counsel then left the Regional Board members in a state of confusion by saying that the mercury and PCBs requirements in the permit were not fully action-based and by ultimately acknowledging that failing to meet the numeric criteria would render the co-Permittees subject to enforcement and

third party lawsuits even if they implemented all required actions.¹⁶ Then, contrary to the State Board's own conclusions and use of them, just before the improper closed session at the hearing, Board staff and counsel also told the Board members that NALs would not be effective regulatory mechanisms and suggested that the State Board would see anything other than NELs as insufficiently rigorous.¹⁷

Instead, Board staff and counsel should have presented the Board members with a more objective delineation of the State Board's position on the issue of NALs v. NELs; informed them that the State Board has not precluded the use of NALs as an "ambitious, rigorous, and transparent" alternative to NELs; and left the decision on whether to use NELs or NALs in the Board members' hands in a more objective manner considering: (1) the State Board's own use of them,¹⁸ (2) the State Board's Expert Panel's recommendations concerning the use of NALs in municipal stormwater permits in particular,¹⁹ and (3) the guidance the State Board recently provided specifically on this issue in WQO-2015-0075.

In the latter, although the State Board acknowledged that the Los Angeles Regional Board's use of NELs to implement 33 TMDLs in its area was not error given the number and nature of TMDLs involved, it then went on to specifically state: "We emphasize, however, that

¹⁶ Cf. RT-Nov19 at 14:7-19:1 and 156:23-157:7 with 147:1-148:19, 152:19-25, 158:25-160:5.

¹⁷ RT-Nov19 at 167:5-168:10, 170:8-171:1, and 174:8-25.

¹⁸ Storm Water General Permit Order No. 2009-0009-DWQ and Storm Water General Permit Order No. 2014-0057-DWQ.

¹⁹ State Water Board Storm Water Panel of Experts, *The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Discharges from Municipal, Industrial and Construction Activities* (June 19, 2006) at p. 8 ("It is not feasible at this time to set enforceable numeric effluent criteria for municipal BMPs and in particular urban discharges. . . . For catchments not treated by a structural or treatment BMP, setting a numeric effluent limit basically is not possible.") After the conclusion of the public testimony portion of the adoption hearing, Region 2 staff asserted that SCVURPPP's characterization of the Expert Panel's conclusions were amounted to gross misrepresentation. RT-Nov19 at 131:12-20. Although there is no evidence to support it in the record or elsewhere, they then went on to assert that the Expert Panel's report was outdated and that these experts "were not *thinking* in the context of Effluent Limits . . . which are an enforceable numeric . . . performance measure that will be enforced." RT-Nov19 at 133:1-9 (emphasis supplied.)

we are not taking the position that [NELs] are appropriate in all MS4 permits or even with respect to certain TMDLs within an MS4 permit. We also decline to urge the regional water boards to use [NELs] in all MS4 permits.”²⁰

With regard to the Regional Board staff’s repeated assurances to its Board that the Permittees’ concerns with NELs could be sidelined and dealt with later through the exercise of the Regional Board staff’s enforcement discretion, they and counsel should have informed their Board members that the State Board had expressed a different policy preference earlier this year when it stated in WQO-2015-0075: “from a policy perspective, we find that MS4 Permittees that are developing and implementing [alternative compliance measures] should be allowed to come into compliance with . . . interim and final TMDLs through provisions built directly into their permit rather than through enforcement orders” – i.e., enforcement orders that could arise from noncompliance with NELs per se.²¹ The Regional Board’s approval of NELs without the Petitioner’s full and fair opportunity to comment on the far-reaching change from action-based limits to NELs is clearly an abuse of discretion, as well as a violation of due process.

2. The NELs are not Supported by Legally Sufficient Findings or Substantial Evidence.

Beyond these significant process issues, the substantive justification offered by Board staff for treating the numeric performance criteria for PCBs and mercury load reductions as NELs also falls short. First, while they are undoubtedly designed to further implement the region’s mercury and PCBs TMDLs and represent an increment towards getting to the waste load allocations assigned to stormwater therein, there is nothing concrete in the record revealing

²⁰ WQO-2015-0075 at p. 58-59.

²¹ Id. at 31.

how the numeric values of the NELs were actually calculated.²² Instead, Board staff state why they think the load reduction numbers they have identified as NELs for PCBs are feasible to achieve based on the Bay Area's recent performance in terms of new and redevelopment and building demolition and construction.²³ But the staff's economic forecast (which sometimes proves wrong even when done by actual economists) requires no deference given their expertise and has no real basis in the record. Moreover, a plethora of testimony at the adoption hearing demonstrated that even if the staff's prediction concerning the pace of development and construction ends up being on target, there is still likely to be a significant shortfall in all or at least many co-Permittees meeting the NELs.²⁴ The MRP 2.0 does not contain a clear or feasible path to achieving or measuring compliance with the NELs. The State Board has also repeatedly found that NELs have not yet proved feasible for MS4 and non-municipal stormwater dischargers alike.²⁵

At one point, staff testified at the adoption hearing that the PCB numbers were "based on an updated assessment of controls to reduce PCBs to the maximum extent practicable and then indicate that their calculation "started with a numerical formula."²⁶ But, importantly, this

²² Region 2 counsel's last minute effort to try and create a record for their being an adequate substantive basis for the NELs through a wholly conclusory statement by a staff member without the "adequate information" she refers to having been delineated in the record and subject to prior public review and comment, is meaningless. *See* RT-Nov19 at 176:10-19.

²³ RT-Nov18 at 26:6-9.

²⁴ *See e.g.*, RT-Nov18 at 138:8-142:18.

²⁵ *See, e.g.*, WQO-2015-0075; Industrial Storm Water General Permit Order No. 2014-0057-DWQ (deleting NELs from the permit); Construction Storm Water General Permit Order No. 2009-0009-DWQ (same); and State Water Board Storm Water Panel of Experts, *The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Discharges from Municipal, Industrial, and Construction Activities* (June 19, 2006) ("It is not feasible at this time to set enforceable numeric effluent criteria for municipal BMPs and in particular urban discharges...For catchments not treated by a structural or treatment BMP, setting a numeric effluent limit basically is not possible.")

²⁶ RT-Nov19 at 135:1-11.

formula and these calculations are nowhere to be found in the record, and later in their testimony, the same staff member even indicates that they abandoned the formula-based calculation effort.²⁷ Their testimony then goes on to explain that they turned to “a number of sources of information” to come up with the 3 kilogram PCBs load reduction requirement, but once again, these sources were not delineated in the permit’s Fact Sheet or elsewhere in the record.²⁸

The Board staff member’s further testimony on the issue indicates that the PCBs load reduction numbers in controversy are no more than speculative “guesstimate estimates” that represent the idea of “[h]ere is the number, we think it’s attainable.”²⁹ Ultimately, the staff even expressly conceded that “we know that there’s uncertainty with the basis of our numbers,” while trying to reassure the Board members that they could deal with the uncertainty through their future exercise of enforcement discretion.³⁰ (Board counsel then further conceded to one of the Board members that the numbers were uncertain and that the co-Permittees would be in non-compliance if they did not meet them despite their good faith efforts to implement all required actions.)³¹

Finally, in the course of the adoption hearing, Board staff revealed that, when all was said and done, their position on NELs was really based on their preference to avoid having to specify additional required actions and then expending the additional effort necessary to oversee and enforce on them if bad actors emerge among the Permittees and refused to meet their

²⁷ Id. at 137:11-13.

²⁸ Id. at 138:3-5.

²⁹ Id. at 139:7-8 and 146:19-20. Relative to some communities that are not likely sources of PCBs, the staff’s testimony even went further to characterize the requirements as they might default down to them as “unrealistic.” RT-Nov19 at 153:16-20. *See also* Id. at 168:18-169:7.

³⁰ Id. at 149:17-150:9.

³¹ Id. at 152:7-25.

implementation obligations.³² Instead, they ultimately admitted that their insistence on NELs reflects their frustrations and preference to employ a psychology of “coercion.”³³ Not only is this an arbitrary and capricious basis for calculating the numbers used for NELs, the Regional Board also abused their discretion in adopting the NELs, because they voted to include them based on the mistaken understanding that they were necessary as an alternative to NALs in order to avoid the State Board disapproving the permit.³⁴ The need for undertaking a coercive approach vis-à-vis the Permittees is clearly not a view that was shared by the members of the Regional Board. There is simply no substantial evidence to support the imposition of NELs.

F. The Regional Board’s Imposition of LID, Green Infrastructure, Trash Control, and Mercury and PCB NEL Requirements Exceed the Maximum Extent Practicable Standard and are Not Supported by Legally Sufficient Findings or Substantial Evidence.

The federal Clean water Act requires stormwater discharges to be controlled to the “maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the state determines appropriate for the control of such pollutants.” (33 U.S.C. § 1342(p)(3)(B)(iii).) The Regional Board does not include legally sufficient findings in MRP 2.0 that the permit as a whole satisfies the MEP standard. While the Petitioner recognizes that MEP is a flexible standard, the Regional Board has failed to justify why MRP 2.0 requires implementation of difficult, burdensome, and extremely expensive requirements when there is little, if any evidence that such requirements will have demonstrable water quality benefits. Specifically, the Low Impact Development and Green Infrastructure Planning and Implementation requirements of

³² See RT-Nov19 at 137:1-6 and 146:13-20.

³³ RT-Nov 19 at 171:17-174:3.

³⁴ RT-Nov19 at 160:7-161:15, 166:20-167:5, 168:11-169:19, 181:13-183:17, 187:7-188:20, 193:15-194:2 and 196:3-25.

Provision C.3, the Trash Load Reduction requirements of Provision C.10, and the Mercury and PCB Load Reduction NEL requirements of Provisions C.11 and C. 12, respectively, are each not supported by evidence in MRP 2.0 that they will reduce stormwater discharges to the MEP.

Fundamentally, the Regional Board's expectations that Petitioner can comply with these requirements are unreasonable and out of touch with municipal planning and obligations. For example, Petitioner will frequently be unable to meet the hydromodification sizing criteria in Provision C.3.d (see also C.3.j.i.2.g) when considering roadway retrofit projects, because C.3.d conflicts with competing needs for space for pedestrian and bicycle traffic, Americans with Disabilities Act compliance, as well as underground utilities. There is no evidence in MRP 2.0 that compliance with hydromodification sizing criteria meets MEP. Other aspects of the Green Infrastructure Plan under Provision C.3.J. are also either infeasible or extremely expensive to implement, and the costs of such implementation are not justified by the findings in MRP 2.0. The Petitioner raises similar concerns with respect to the Trash Load Reduction requirements, which include extremely aggressive targets that are very difficult if not impossible to achieve, as well as burdensome trash capture system maintenance and management obligations that carry significant expense without evidence in the record to support why such obligations are necessary or meet MEP. Finally, the mercury and PCB NELs are not legally supported as meeting MEP, when NALs would accomplish the same task without the corresponding legal consequences described above.

G. The Regional Board Failed to Consider the Factors in Water Code section 13241

The Regional Board was required to undertake a careful analysis of the technical feasibility and economic reasonableness of the LID, Green Infrastructure, Trash Control, and

Mercury and PCB NELs in MRP 2.0, because they are more stringent than federal law. (*City of Burbank v. State Water Resources Control Bd.*, 35 Cal.4th 613, 626-27, 629 (2005); Water Code §§13241(d), 13263(a).) Even though the Regional Board briefly considers costs as a relevant factor in determining MEP, per the requirements of Order WQ 2000-11 (*Cities of Bellflower, et al.*), Petitioner maintains that these requirements go beyond federal law, these requirements are costly and burdensome, and therefore the Regional Board must conduct a proper 13241 analysis.

Thank you for your consideration.

Dated: December 18, 2015

By: 

Richard Pio Roda
City Attorney
City of San Leandro

PROOF OF SERVICE

I, the undersigned, declare as follows:

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Alameda, State of California. My business address is 555 12th Street, Suite 1500, Oakland, California 94607.

On December 18, 2015, I served true copies of the following documents on the addressees listed below via email and Federal Express, where I am readily familiar with Meyers Nave's practice for collection and processing of correspondence and packages for delivery by Federal Express:

PETITION OF THE CITY OF SAN LEANDRO FOR REVIEW OF WASTE DISCHARGE REQUIREMENTS ORDER NO. R2-2015-0049 (NPDES PERMIT CAS612008) FOR DISCHARGES OF MS4s IN THE SAN FRANCISCO BAY REGION - THE SAN FRANCISCO BAY MUNICIPAL REGIONAL STORMWATER NPDES PERMIT; and ATTACHMENTS A THROUGH D

State Water Resources Control Board
Office of Chief Counsel
Attn: Adrianna M. Crowl
1001 "I" Street, 22nd Floor
Sacramento, CA 95814

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 18th day of December 2015, in Oakland, California.



Kendra Whitworth
MEYERS NAVE
555 12th Street, Suite 1500
Oakland, CA 94607
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510-808-2000

STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

MEETING DATE: November 18, 2015

ITEM: 7 – SUPPLEMENTAL

**SUBJECT: REVISED TENTATIVE ORDER FOR REISSUANCE – MUNICIPAL
REGIONAL STORMWATER NPDES PERMIT**

The following are proposed revisions to the November 10, 2015, version of the Revised Tentative Order that provide clarification as described.

1. Provision C.10.b - Demonstration of Trash Reduction Outcomes

Provide clarification on frequency of visual assessments required by Provision C.10.b.ii.b.(iii) – Visual Assessment of Outcomes of Other Trash Management Actions on page C.10-4 (Tentative Order Page 107)

Fact Sheet for Provision C.10.b.ii.b.((i)-(iv) - Visual Assessment of Outcomes of Other Trash Management Actions on page A-99

Add the following after the second sentence, ending with “implemented in the area.”:

The frequency of required visual assessments depends on the rate of trash generation, the sources and types of trash, trash management actions deployed, and time of year. During the wet season, October through April, visual assessments in a trash management area must be conducted at a frequency that determines whether there may be trash discharges to the storm drain system from sources or areas of trash accumulations before a trash management action or combination of actions is implemented or between recurring trash management actions. The degree of trash reduction that a Permittee claims also affects the frequency of visual assessment necessary to make the claim. Higher reduction claims typically require higher frequency of assessments.

During the wet season, for claims that a trash generation area has been reduced to a low trash generation area, this should be at least once per month in what was a very high trash generation area, at least twice per quarter in what was a high trash generation area, and once per quarter in what was a moderate trash generation area. Permittees, with justification, may conduct less frequent visual assessments for claims that a trash generation area has been reduced from what was a very high trash generation area to a high or moderate trash generation area or from what was a high trash generation area to a moderate trash generation area. Frequency of visual assessments during the dry season, May through September, should be at least once per quarter, including, and preferably, within the month (September) before the wet season begins. Higher frequencies of visual

assessments than those illustrated above may be required to demonstrate effectiveness of trash control actions and claimed trash reduction. Lower frequencies than those illustrated above may also be acceptable with justification.

2. Provision C.10.b.v - Receiving Water Monitoring

Break up one long sentence and clarify dates in another.

Fact Sheet for Provision C.10.b.v - Receiving Water Monitoring on page A-102

Break up sentence after question number 4 into two sentences as follows:

The monitoring tools and protocols may include direct measurements and/or observation of trash in receiving waters, ~~or in~~ In scenarios where direct measurements or observations are not feasible, surrogates for trash in receiving waters, such as measurement or observation of trash on shorelines or creek banks may provide a practicable means of monitoring trash.

Fact Sheet for Provision C.10.b.v - Receiving Water Monitoring on page A-102

Provide date clarifications in second sentence of last paragraph as follows:

, Permittees must submit a preliminary report on the proposed monitoring program by July 1, 2019, a year in advance of the final proposed monitoring program due July 1, 2020, six months before the Permit expires.

3. Provision C.10.f - Reporting (Trash Load Reduction)

Provide clarification on what must be included in a report of non-compliance with a mandatory trash reduction deadline.

Provision C.10.f.v. on page C.10-9 (Tentative Order Page 112)

Replace last sentence of reporting requirement C.10.f.v.b, with the following:

The report shall include a plan and schedule for implementation of full trash capture systems sufficient to attain the required reduction. A Permittee may submit a plan and schedule for implementation of other trash management actions to attain the required reduction in an area where implementation of a full trash capture system is not feasible. In such cases, the report shall include identification of the area and documentation of the basis of the Permittee's determination that implementation of a full trash capture system is not feasible.

C. 10. Trash Load Reduction

C.10.b. Demonstration of Trash Reduction Outcomes

v. **Receiving Water Observations-Monitoring** - Permittees shall conduct receiving water monitoring ~~receiving water observations downstream from trash generation areas that have been converted from Very High, High, or Moderate to Low trash generation rates, or at other locations for which receiving water monitoring over time will produce useful trash management information.~~ and develop receiving water monitoring tools and protocols and a monitoring program designed, to the extent possible, to answer the following questions:

- Have a Permittee's trash control actions effectively prevented trash within a Permittee's jurisdiction from discharging into receiving water(s)?
- Is trash present in receiving water(s), including transport from one receiving water to another, e.g., from a creek to a San Francisco Bay segment, at levels that may cause adverse water quality impacts?
- Are trash discharges from a Permittee's jurisdiction causing or contributing to adverse trash impacts in receiving water(s)?
- Are there sources outside of a Permittee's jurisdiction that are causing or contributing to adverse trash impacts in receiving water(s)?

The monitoring tools and protocols shall include direct measurements and/or observations of trash in receiving water(s), or in scenarios where direct measurements or observations are not feasible, surrogates for trash in receiving waters, such as measurement or observations of trash on stream banks or shorelines.

a. **Development and Testing Plan** - ~~The observations shall be sufficient to determine whether a Permittee's trash control actions have effectively prevented trash from discharging into receiving waters, whether additional actions may be necessary associated with sources within a Permittee's jurisdiction, or whether there are ongoing sources outside of the Permittee's jurisdiction that are causing or contributing to adverse trash impacts in the receiving water(s).~~ Permittees shall submit a plan acceptable to the Executive Officer by July 1, 2017, to develop and test a proposed receiving water monitoring program tools and protocols that includes the following:

- (i) ~~Description of the tools and protocols to be developed and tested;~~
- (ii) Description of discharge and receiving water scenarios, which will be considered, that accounts for the various receiving waters and watershed, community, and drainage characteristics within Permittees' jurisdictions that affect the discharge of trash and its fate and effect in receiving water(s);
- (iii) Description of factors, in addition to those in C.10.b.v.a.(ii), that will be considered and evaluated to determine scenarios and spatial and temporal representativeness of the tools and protocols;

- (iv) Identification of sites, representative of all the Permittees and discharge and receiving water scenarios, that will be monitored during this permit term;
- (v) Development of a system to manage and access monitoring results;
- (vi) Opportunity for input and participation by interested parties;
- (vii) Scientific peer review of the tools and protocols and testing results; and
- (viii) Schedule for development and testing of the tools and protocols, with monitoring at representative sites starting no later than October 2017; and
- (ix) Development of a proposed receiving monitoring program.

If the Permittees conduct this work through an independent third party, approved by the Executive Officer, the Plan may be submitted by July 2018, with monitoring to begin no later than October 2018.

- b. **Report and Proposed Monitoring Program** - The observations shall be conducted a minimum of twice per year until the no trash in receiving water determination has been observed and then confirmed with a subsequent observation, after which the frequency may be reduced to once per year. Permittees shall report progress in the 2018 Annual Report, and submit a preliminary report by July 1, 2019 and a final report by July 1, 2020 on the development and testing of receiving water monitoring tools and protocols and a proposed trash receiving water monitoring program. The progress preliminary report is not required if the Permittees conduct this work through an independent third party, approved by the Executive Officer, that provides input and participation by interested parties and scientific peer review of the tools and protocols and testing results and proposed receiving monitoring program.
- e. Trash Hot Spot cleanup site downstream of a trash management area may serve as a receiving water observation site.

C.10.f. Reporting

- vi. In the 2018 Annual Report, status of progress on development and testing of the receiving water monitoring tools and protocols and monitoring program development, C.10.b.v. receiving water observations, including the locations and times of observations and associated determinations. Pending EO acceptance of a monitoring proposal, reference can be made to the existing Trash Hot Spot Cleanup data.

**Response to Comments on May 11, 2015 Tentative Order
Provision C.11 and C12. – Mercury and PCBs**

Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
ACCWP Legal Dublin	4 18	C.12.a.ii.(4)	Programs not Permittees, population-based responsibility	<p>This Provision requires Permittees to implement control measures to achieve county-specific load reduction criteria set forth in Table 12.1. However, the first sentence of the third paragraph of Provision C.12.a.ii.(4) provides that the Countywide Urban Runoff Programs are responsible for the specific portions of the Permit-wide load reduction shown in Table 12.1. The Programs are not waste dischargers under the permit, thus, this statement regarding responsibility of the Programs is inappropriate.</p> <p>The following paragraphs relating to Table 12.1 provide a confusing and unclear compliance pathway for Permittees. Furthermore, the population based default lacks a nexus to the potential for PCB load reduction in that different co-Permittee jurisdictions in that land area and industrial development often have little relation to population in that area. This is further discussed in the ACCWP comments.</p>	<p>We agree that the countywide programs are not waste dischargers under the permit. The San Francisco Bay PCBs TMDL includes wasteload allocations specific to each county and each county-based wasteload allocation applies to all Permittees in the county. So even though the countywide programs are not waste dischargers, the member agencies of a countywide program, such as the Alameda Countywide Clean Water Program, are all of the Permittees within the county. As such, we are using countywide programs as a pseudonym for all of the Permittees within a given county. For example, in C.8 Water Quality Monitoring, where responsibility of the requirement is shared by all Permittees in a county, we use county permittees as the pseudonym for all Permittees in a county, e.g., Alameda Permittees. Each group of county permittees is identified on the first page of the Tentative Order, except for Permittees in Solano County. To be clearer, we have revised the third paragraph of Provision C.12.a.ii.(4) of the Tentative Order and other parts of the Tentative Order to replace use of the term countywide program or county program with county Permittees. We also define the Solano Permittees when that pseudonym is used for all Permittees in</p>	See referenced changes to Provision C.11 and C.12

**Response to Comments on May 11, 2015 Tentative Order
Provision C.11 and C12. – Mercury and PCBs**

Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
					<p>Solano County.</p> <p>We disagree with the commenter's assertion that the Permittee compliance paragraphs that follow relating to Table 12.1 provide a confusing and unclear compliance pathway for Permittees. The Tentative Order specifies the manner in which the load reduction responsibility is derived for individual Permittees. The San Francisco Bay PCBs TMDL and San Francisco Bay Mercury TMDL county-specific wasteload allocations were based on relative population. As such, use of relative population to establish Permittee-specific load reduction responsibility is consistent with the assumptions and requirements of the county-specific wasteload allocations. The Tentative Order allows Permittees to propose an alternative approach to derive Permittee-specific load reductions if they can identify one that better reflects the relationship between Permittee and PCB load reduction opportunities. An acceptable alternative approach is subject to a permit amendment.</p>	
ACCWP Legal Belmont Brisbane Burlingame San Bruno	5A 1 1 1 2	C.11/12.c	No clear path to compliance	Provisions C.11 & C.12 impose requirements for these legacy pollutants already in the Bay system that will be extremely challenging to	The Tentative Order imposes requirements to reduce loads to the Bay from the MRP area. In response to this and similar comments, we have added detail to the section of the Fact Sheet	None

**Response to Comments on May 11, 2015 Tentative Order
Provision C.11 and C12. – Mercury and PCBs**

Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
San Carlos San Mateo	2 2			<p>implement, both from a technical and fiscal perspective. This has been emphasized by Permittees in the Board workshop hearings. Provisions C.11.c. & C.12.c require Permittees to implement green infrastructure projects during the permit term in order to achieve PCBs and Mercury load reductions of 120 grams/year for PCBs and 48 grams/year for Mercury, achieved over the last three years of the permit. The Provisions require implementation of sufficient green infrastructure projects to achieve the county-specific load reduction performance criteria shown in Tables 11.1 & 12.2. The intention and description of the load reduction performance criteria are ambiguous and vague. This language is easy to misinterpret placing the MS4s at risk in regulatory/litigation enforcement actions. The co-Permittees lack clear paths to compliance and sufficient controls have not been provided in this permit to assure that numerically denominated quotas of mercury and PCB load</p>	<p>that explains the technical basis of and how load reduction value is established for green infrastructure implementation. These load reduction calculations are not complex and they provide a clear method for demonstrating compliance with requirements in the Tentative Order.</p> <p>The load reduction Permittees achieved through green infrastructure (including Provision C.3 required treatment controls) in the last three years of the last permit term exceeds the scale of load reductions through green infrastructure required in this permit. The previous permit timeframe included years when the Bay Area was rebounding from a significant recession, and economic conditions for redevelopment appear to be much more favorable during the permit term. To the extent that load reductions from Provision C.3 required treatment controls for new and redevelopment projects are insufficient to meet the numeric performance criteria of load reductions, Permittees have opportunity to implement public infrastructure projects that could attain the short falls in load reductions. Thus, the Tentative Order establishes a reasonable and achievable load reduction for Permittees to achieve through green</p>	

**Response to Comments on May 11, 2015 Tentative Order
Provision C.11 and C12. – Mercury and PCBs**

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				<p>reductions will be realized in each of the last three years of the permit. To now connect Green Infrastructure to PCB and mercury load reductions, when there is little technical basis for predicted reductions is legally inappropriate.</p> <p>Permittees lack sufficient control to assure that numerically-denominated quotas of mercury and PCB load reductions will be realized in each of the last three years of the permit, and as currently stated, these green infrastructure requirements are contrary to the Basin Plan - and this remains the case regardless of whether such quotas are defined on an area-wide, county-level, or proportionate Permittee specific basis.</p>	<p>infrastructure controls during the permit term.</p> <p>The green infrastructure requirements are not contrary to the Basin Plan. They are based on an assessment of controls to reduce mercury and PCBs to the maximum extent practicable, and they consistent with the SF Bay mercury and PCBs TMDL wasteload allocations and implementation plans in the Basin Plan.</p>	
ACCWP Legal SCVURPPP Legal	5B 7C	C.11/12.c	No clear path to compliance Numeric limits	<p>The State Board has repeatedly found that numeric effluent limitations have not yet proved feasible for MS4 dischargers. It must be made clear that these projected load reductions over the last three years of the permit and the performance criteria of Tables 11.1 and 12.1 are not narrative or numeric effluent limitations, but are goals or, at</p>	<p>We decline to revise the noted subprovisions (and associated aspects of the Fact Sheet) to specify that the quantitative performance criteria they reference are numeric action levels (NALS) (or similar mechanisms), not numeric effluent limitations (NELs). The numeric performance criteria in Provisions C.11 and C.12 are numeric effluent limitations (NELs), not numeric action levels (NALS). The C.11 mercury</p>	None

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				<p>most, Numeric Action Levels for load reduction in the design and implementation of green infrastructure projects.</p> <p>The Water Board must therefore expressly clarify the type of numeric requirement it is imposing in C.11.c and C.12.a and c in order to legally adopt the permit under the NPDES regulations and principles of due process of law. See <i>Connally v. General Constr. Co.</i> 269 U.S. 385 (1925).</p> <p>Specifically, it needs to revise these subprovisions (and associated aspects of the Fact Sheet) to specify that the quantitative performance criteria they reference are NALs (or similar mechanisms), not NELs. Indeed, directly enforceable NELs would be inconsistent with the Basin Plan, the State Board's most recent (and consistent) direction on this subject, and U.S. EPA's most recent guidance memorandum on implementing TMDL requirements in municipal stormwater permits.</p> <p>While all three of these legally controlling documents recognize</p>	<p>requirements and C.12 PCBs requirements are consistent with the Basin Plan requirements for implementing the wasteload allocations of the San Francisco Bay Mercury and PCBs TMDLs, and, counter to the assertion by the commenter, these directly enforceable NELs are consistent with the State Water Board's most recent precedential order on this subject, and U.S. EPA's most recent guidance memorandum on implementing TMDL requirements in municipal stormwater permits.</p> <p>The commenter has misinterpreted findings of the State Water Board on use and feasibility of NELs. An expert panel convened by the State Water Board has found that numeric effluent limits are feasible in certain circumstances – in particular when the limit is expressed as a loading (as is the case in the Tentative Order) rather than a stormwater concentration. Much of the difficulty in whether numeric effluent limits are appropriate or feasible for stormwater concerns the difficulty in measuring concentrations in stormwater in view of the variability experienced during a storm. None of these difficulties is present with the implementation of the sort of numeric limit expressed in this permit.</p>	

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				<p>the potential for the eventual use of NELs to address TMDLs, they also recognize that NALs and other alternative requirements must be used where NELs have not yet proven feasible for stormwater, as the State Board has repeatedly found in recent years. Indeed, the State RWL Order specifically states: “from a policy perspective, we find that MS4 Permittees that are developing and implementing [alternative compliance measures] should be allowed to come into compliance with ...interim and final TMDLs through provisions built directly into their permit rather than through enforcement orders” – i.e., enforcement orders that could arise from non-compliance with NELs per se. The EPA Memo expressly conditions the use of NELs in municipal stormwater permits on feasibility and emphasizes that MS4 permit writers “have significant flexibility” to use “various forms of clear, specific and measurable requirements” as alternatives to NELs where they have not been shown to be</p>	<p>The commenter also misinterpreted the State RWL Order statements pertaining to use of enforcement orders. The State RWL Order statements were in response to petitioners that asserted strict compliance with water quality standards must be enforced and any interactive or phased schedule of implementation actions deemed necessary to attain water quality standards should only be allowed in an enforcement order not in a permit. On the contrary, in the State RWL Order, the State Water Board stated the NPDES permits could and should allow an alternative compliance path that allows permittees appropriate time to come into compliance with receiving water limitations without being in violation of the receiving water limitations during full implementation of the compliance alternative. The State RWL Order further stated that the alternative compliance path must be ambitious, rigorous, and transparent. The C.11 mercury requirements and C.12 PCBs requirements provides alternative compliance path that is ambitious, rigorous, and transparent. The 2014 U.S. EPA Memo states “where the NPDES authority determines that MS4 discharges have the reasonable potential to cause or</p>	

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SCVURPPP	7A	C.11/12	Revise TMDL	feasible. EPA Memo at 4-5	<p>contribute to a water quality standard excursion, EPA recommends that the NPDES permitting authority exercise its discretion to include clear, specific, and measurable permit requirements and, where feasible, numeric effluent limitations as necessary to meet water quality standards.” Indeed, it is clear that the stormwater discharges of mercury and PCBs have the reasonable potential to cause or contribute to water quality standard excursions (the Bay is impaired by mercury and PCBs, and municipal stormwater discharged to the Bay is a significant source of mercury and PCBs). The clear, measurable, and specific numeric effluent limitations that are in this permit were feasible to develop and are feasible to achieve.</p> <p>The numeric effluent limitations in this permit can be feasibly achieved with modest increases in effort over and above the level of effort in the previous permit term. This increase in effort is consistent with the approach described in the Fact Sheet and in provisions for mercury and PCBs. The previous permit term provided an opportunity to test a variety of control measures, and this permit term calls for the implementation of control measures where they may provide effective load reduction benefit.</p>	None

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Legal				<p>challenge them when they were adopted, the Santa Clara Program and its members have long questioned the technical basis and feasibility of the total maximum daily loads (“TMDLs”) and associated allocation/implementation plans and timetables adopted by the Water Board for mercury and PCBs. These TMDLs deal with legacy pollutants already in the Bay. Trying to achieve massive load reductions in current discharges to offset what is already in the receiving water as the result of historical activities through the imposition of requirements on current discharges simply is unrealistic and will not lead to attainment of water quality objectives within the timetables the TMDLs contemplate. These TMDLs fundamentally need to be revisited and revised under the adaptive management principles as was expressly contemplated at the time of</p>	<p>the San Francisco Bay Mercury and PCBs TMDLs, which would be subject to a public process beyond this permit reissuance effort. Regardless, we disagree with the concept that these TMDLs require “massive” and “unrealistic” load reductions, and the commenter provides no evidence, just an opinion that the imposition of requirements on current discharges is unrealistic and will not lead to attainment of water quality objectives within the timetables the TMDLs. On the contrary, the underlying assumptions and basis of the TMDL and wasteload allocations indicate the load reductions will affect attainment of water quality objectives. There is also new evidence from studies conducted by the Regional Monitoring Program¹ that margin areas of the Bay that receive discharges of urban stormwater covered by the Tentative Order are more severely impacted by PCBs than margin areas that do not receive urban stormwater discharges. Regardless, the load reduction requirements in the Tentative Order are consistent with the legally applicable wasteload allocations and</p>	

¹ Davis, J.A., L.J. McKee, T. Jabusch, D. Yee, and J.R.M. Ross. 2014. PCBs in San Francisco Bay: Assessment of the Current State of Knowledge and Priority Information Gaps. RMP Contribution No. 727. San Francisco Estuary Institute, Richmond, California.

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				<p>their adoption.</p> <p>The sooner such revision occurs, the better, so that more realistic, technically feasible, and economically achievable municipal stormwater permit requirements can be better calculated.</p>	<p>their underlying assumptions and the phased implementation plans for the TMDL allocations described in the Basin Plan.</p> <p>The Basin Plan also describes conditions that must be satisfied in order for the Water Board to consider revising any aspect of the TMDLs, and these conditions are reiterated in the Fact Sheet. Important among these is that Permittees must demonstrate "that all technically and economically feasible and cost-effective control measures recognized by the Water Board have been fully implemented and the PCBs load reduction of such measures has been quantified." The actions proposed in the Tentative Order are a step in the direction that could enable Permittees to make this demonstration successfully to the Water Board.</p>	
SCVURPPP Legal	7B	C.11/12	Provisions are vague	<p>Provisions C.11 and C.12 (and the related explanations of them in the Fact Sheet) <i>must be significantly clarified</i> to withstand legal muster.</p> <p>First, as currently drafted, the references to numeric load reduction performance criteria in Provisions C.11.c and C.12.a and c are impermissibly vague and ambiguous such that they may be</p>	<p>The performance criteria in C.11 and C.12 are numeric effluent limitations; there is nothing in the draft permit or in extensive discussions with the Permittees to suggest they are NALs. They are intended to be directly enforceable permit requirements, wholly consistent with the scale of PCBs load reductions required in the PCBs TMDL phased implementation plan. The commenter presumes the enforceable permit requirements expressed as</p>	<p>We have edited the Fact Sheet to include the complete accounting system used to compute load reduction value for control measures.</p>

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				<p>misinterpreted by some to contain numeric water quality based effluent limitations (“NELs”) rather than numeric action levels (“NALs”) or similar mechanisms. The distinction is of critical importance as NALs will, where quantitative performance criteria cannot be fully addressed, trigger requirements for the co-permittees to report on the circumstances giving rise to that situation and identify additional actions and time schedules acceptable to the Executive Officer to further address them. In contrast, NELs would trigger liability for a permit violation <i>even if</i> the inability to achieve them within the timetable required were beyond the capability of the co-permittees and/or subject to being reasonably addressed by the further action plans they submit and are directed by the Executive Officer to implement.</p>	<p>numeric performance criteria may not be attainable and as such would trigger a liability for a permit violation, but does not provide evidence that the numeric performance criteria are not attainable. Compliance with these numeric effluent limitations can be achieved through a number of control measures that are available to the Permittees as described in the Fact Sheet. The commenter asserts that numeric action levels are more appropriate. However, as presented by the commenter, numeric action levels would likely just trigger a vague plan for further action to attain the action levels and as such, without further specificity, numeric action levels have no clear meaning or set of consequences, and are thus an inadequate means of ensuring accountability and adequate actions on the part of Permittees. To date, the Permittees have had ample opportunity but have provided minimal documentation of commitments to implement new or enhanced actions to reduce mercury and PCBs loads that could be considered credible action plans in lieu of the proposed numeric effluent limitations. See also response to ACCWP Legal 5B on the topic of the degree of control Permittees have in achieving load reductions.</p>	

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SCVURPPP Legal	7D	C.11/12.c	No clear path to compliance	<p>While legally controlling documents recognize the potential for the eventual use of NELs to address TMDLs, they also recognize that NALs and other requirements must be used where NELs have not yet proven feasible for stormwater, as the State Board has repeatedly found. The State RWL Order states: “from a policy perspective, we find that MS4 Permittees that are developing and implementing [alternative compliance measures] should be allowed to come into compliance with . . . interim and final TMDLs through provisions built directly into their permit rather than through enforcement orders” – i.e., enforcement orders that could arise from non-compliance with NELs per se. The EPA Memo expressly concedes the use of NELs in municipal stormwater permits on feasibility and emphasizes that MS4 permit writers “have significant flexibility” to use “various forms of clear, specific and measurable requirements” as alternatives to NELs where they have not been shown to be</p>	<p>See response to ACCWP Legal #5B on the topic of feasibility of numeric effluent limits, the permissibility of using numeric effluent limitations instead of action levels, and consistency with the Basin Plan.</p> <p>In response to this and similar comments, we have added some detail to the section of the Fact Sheet that explains how load reduction is established for green infrastructure implementation. These load reduction calculations are not complex and they provide a clear method for demonstrating compliance with requirements in the Tentative Order. The load reductions Permittees achieved through green infrastructure (including implemented C.3 new and redevelopment treatment controls) in the last three years of the previous permit term exceeds the numeric performance criteria (quotas) of load reductions through green infrastructure in this permit. The previous permit timeframe included years when the Bay Area was rebounding from a significant recession, and economic conditions for redevelopment are much more favorable during the permit term. Accordingly, Permittees may not have to do more than what may be achieved via compliance with C.3 new and</p>	None

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				<p>feasible. EPA Memo at 4-5.</p> <p>Provisions C.11.c and C.12.c also need to focus requirements and performance criteria on local government approvals of public and private projects relative to them incorporating green infrastructure features. While municipalities can, with great effort and significant resources, reasonably be expected to put into place green infrastructure plans in initial years of this permit term and may even be expected to apply green infrastructure requirements to their approvals of public and private projects so opportunities are not lost, local governments cannot control the number of project applications or fully control the pace of CEQA review, funding approval, or construction timetables.</p> <p>Because Permittees lack control to assure mercury and PCB load reductions will be realized in each of the last three years of the permit, these green infrastructure requirements are contrary to the Basin Plan.</p>	<p>redevelopment requirements. To the extent that the Permittees cannot control the number of project applications they receive or fully control the pace of CEQA review, funding approval, or actual construction build-out timetables associated with such projects, and the number of such projects are insufficient to meet the numeric performance criteria of load reductions, Permittees have the opportunity to implement public infrastructure projects that could attain the short falls in load reductions. Thus, the Tentative Order establishes a reasonable and achievable load reduction for Permittees to achieve through green infrastructure controls during the permit term.</p>	

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SCVURPPP Legal	7E	C.11/12.c	Credit approval of GI projects	<p>T.O. requirements must be revised to <i>refocus</i> the achievement of the performance criteria on loading reductions that will <i>arise from project approvals</i> issued within the permit term. To the extent the number of projects approved within the final three years of the permit term are not sufficient to give rise to loading reductions fully meeting the performance criteria due to circumstances beyond local government control, the co-Permittees should also be allowed to address this in a report and plan submission that will afford them additional time without being in noncompliance for the reasons stated above.</p>	<p>See response to SCVURPPP Legal #7D and response to ACCWP Legal Comment #5A.</p> <p style="text-align: center;">None</p>	
SCVURPPP Legal	7F	C.11/12.a, c	No clear path to compliance	<p>For the numeric performance criteria to stand up as legal, Permittees must, <i>at the time of permit adoption</i>, be given a defined, certain and reliable means by which their efforts to meet them will be measured. See <i>Connally, supra</i>. Currently they put off until <i>after</i> adoption of the T.O. a determination about whether the assessment methodologies developed in 2013 will govern these</p>	<p>In response to this comment, we have revised the accounting methods in the Fact Sheet to describe the complete accounting system used to compute load reduction value for control measures the correspondence between a unit of effort of a control measure and the amount of load reduction value received that will be used in this permit term.</p> <p>See also response to Brentwood #5.</p>	<p>We have edited the Fact Sheet to describe the complete accounting system used to compute load reduction value for control measures.</p>

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				<p>measurements throughout the permit term.</p> <p>If developing an enhanced assessment methodology during the course of the permit term for application in <i>future</i> permits is still something the Water Board decides to ask the Permittees to devote their limited resources, Provisions C.11.b and C.12.b must otherwise be refined to provide that the 2013 assessment methodologies will be the ones applied to the numeric performance criteria <i>throughout this permit term</i> and not just on an interim basis.</p>		
SCVURPPP Legal	7G	C.12.f	Unfunded mandate	<p>As noted under Legal Comment No. 2, Provision C.12.f appears to be a requirement for a new state-imposed program concerning the regulation of construction demolition on properties often lying outside of the jurisdiction of the federal Clean Water Act. As such, it subject to the unfunded mandates initiative and requires an analysis of technical feasibility and economic reasonableness pursuant to the Water Code as</p>	<p>The commenter is incorrect that Provision C.12.f a new state-imposed program outside the jurisdiction of the Clean Water Act. PCBs discharge into municipal storm sewers during and after demolition of certain structures containing PCB building materials. The Clean Water Act requires municipal stormwater permits to contain requirements to effectively prohibit non-stormwater discharges into the storm sewers and such other provisions as the EPA Administrator or the State (here, the Board) determines appropriate for the control of pollutants.</p>	<p>Revised TO requirements and Fact Sheet to make the connection between building materials and stormwater discharges clearer.</p>

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				<p>well as the need for potential analysis under CEQA. Local governments do not have the resources or fee authority to fund such a requirement, and the framework it contemplates sensibly should be developed at a state or federal level given that, like the case with asbestos and lead paint, the issue of PCBs in historic building materials is national or at least statewide in scope and its environmental and human health risk implications.</p>	<p>(33 U.S.C. § 1342(p)(3)(B)(ii)-(iii).) PCBs from building materials that enter the municipal storm sewer during the dry season are non-stormwater discharges that must be effectively prohibited. PCBs entering the municipal storm sewer via stormwater runoff and into waters of the U.S. are appropriate for control because the Bay is impaired by PCBs and the PCBs TMDLs contain PCBs wasteload allocations for urban runoff that must be met by 2030. NPDES permits are required to contain effluent limitations that are consistent with the assumptions and requirements of any available wasteload allocation. (40 C.F.R. § 122.44(d)(1)(vii)(B).) The requirements to develop and implement a protocol to manage PCBs in building materials during demolition activities so that PCBs do not enter the storm drain derive from the Clean Water Act requirements stated above. Since there seems to be confusion about the intent of Provision C.12.f and its connection to storm water, we have modified the provision to make the connection with storm water and the requirements clearer.</p>	
Baykeeper	32	C.11	Mercury should have an enforceable	The San Francisco Bay Mercury TMDL calls for an urban stormwater mercury load reduction of 40 kg/yr between the	As described in the Fact Sheet, the interim loading milestone of 120 kg/yr mercury loading is already being achieved. The interim loading milestone	None

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			limit	2003 estimated load (160 kg/yr) and 2018 (120 kg/yr). The Draft MRP should be revised to make clear that this is an enforceable limit.	was not intended to be an enforceable effluent limit in the mercury TMDL.	
Baykeeper	33	C.11	Monitoring to assess compliance	<p>We are concerned, in particular, that any assessment methodology used to determine compliance with waste load allocations be supported by actual stormwater sampling data, and not be purely theoretical. Without stormwater discharge monitoring, there is no way by which Permittees or the Regional Board can judge whether the control measures are actually reducing mercury loads into receiving waters. As stated above, the water quality monitoring provisions currently do not require Permittees to specifically monitor stormwater discharges, and must be revised.</p>	<p>The mercury TMDL provides three means of showing progress toward and ultimate achievement of the load allocations. The most feasible of these methods is accounting for the load reductions that result from implementation of control measures. This is the approach that is called for in Provision C.11.a. Further, the estimates we have now for the loading from stormwater were generated from the type of monitoring called for by the commenter. These types of data are expensive to collect on an ongoing basis. Were such "end-of-pipe" monitoring emphasized in this permit term, the likely result would be that we would receive an estimate of mercury loads to the Bay approximately in line with current estimates described in the Fact Sheet (approximately just under 120 kg/yr). By emphasizing data collection to document load reductions, there is opportunity to learn about how control measures translate into load reductions. This is a better use of monitoring resources than confirming a loading estimate that is expensive to</p>	None

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Baykeeper	34	C.11	Require methylmercury monitoring	<p>In fact, the Mercury TMDL, as adopted in the Basin Plan, requires that Permittees "monitor levels of methylmercury in discharges." The Fact Sheet states that this requirement to monitor discharges was satisfied during the 2009 Permit. However, since discharges are still occurring, the requirement in the TMDL is still applicable and must be included in the MRP.</p>	<p>generate and already available.</p> <p>The Basin Plans states that "[o]nce the Water Board accepted that a requirement has been completed by an urban runoff management agency, it need not be included in subsequent permits for that agency." The requirement to monitoring methylmercury came about because the State Water Board explicitly called out the need to monitor methylmercury in discharges. The remand resolution directed the Water Board to "revise the TMDL to require inclusion in the next round of NPDES permits or in the watershed NPDES permits monitoring for, and determination of the relative proportion of, methylmercury in effluent discharges." The State Water Board did not intend for this to be an ongoing requirement but rather a permit requirement that could be satisfied with data collected during a single permit term. There is no TMDL for methylmercury and there are no required control measures for methylmercury so there is no need to continue this monitoring on an ongoing basis since the information need has already been satisfied. There are other TMDL requirements in the Basin Plan for stormwater that are of this type as well (e.g., develop allocation-sharing scheme with Caltrans).</p>	None

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Baykeeper	36	C.11	Require explanation of pollution controls and costs	In addition, the Draft MRP fails to give guidance on how to develop control measures that meet MEP. The requirement that Permittees prepare an implementation plan to achieve TMDL allocations limit control measures to those that are "economically feasible" without explanation as to how that term should be interpreted consistent with MEP. The MRP should require an explanation of pollution controls that were rejected as economically infeasible, together with a description of how the Permittee determined that the costs were "wholly disproportionate to the potential benefits."	Permittees must identify technically and economically feasible mercury (and PCBs) control measures as part of attaining final wasteload allocations in the future. Economic feasibility is viewed in light of the State Board's interpretation of MEP under State Water Board Order WQ 2001-11 (see Fact Sheet Section IV on Economic Issues). That said, MEP technology controls are the floor in terms of requirements and if Permittees cannot attain the final wasteload allocations through such controls, they will have to undertake additional controls in order to comply with the final allocations.	None
Baykeeper	37	C.11	No credit before full implementation	Baykeeper also questions the propriety of crediting Permittees with mercury load reductions before they occur. Until planned pollution controls are in place, no mercury load reduction credit is warranted. The Draft MRP makes no contingency plan for retroactively retracting credits if the project fails to achieve its goals. This may result in double counting, if during the first year the infrastructure element is fully operational, the full and actual	The purpose of this partial crediting is to provide incentive for implementation of control measures throughout the term of the permit as a means of achieving load reductions needed to achieve the effluent limitations. The commenter's concern about double counting may be based on a misreading of the provision. The 50% credit of yearly load reduction only applies to those control measures that are not fully operational by the end of the permit term. In this case, 50% of one year of credit would be applied at the end of the	none

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Baykeeper	38	C.11	Insufficient GI load reductions	<p>load reduction of that year is credited, in addition to the retroactive 50% credit from the construction year.</p> <p>Baykeeper supports requiring reductions to be achieved through implementation of green infrastructure, but question (1) whether the modest targets represented in g/yr are sufficient to maintain progress towards both interim and final load allocations, and (2) the use of year 2040 as a planning horizon when the TMDL requires a load allocation of 82 kg/yr be attained by year 2028.</p>	<p>permit term in which construction is still taking place, and the remaining 50% of the yearly load reduction would be credited during the year the measure came on line. There are only two 50% pieces to be allocated in this fashion according to the permit language so no double counting is possible. In other words, even if the control measure becomes fully operational in year 1 of the subsequent permit, it would only receive the remaining 50% of the credit for this first year.</p> <p>The scale of load reductions from green infrastructure implementation is appropriate relative to the expected pace of the redevelopment that creates opportunities for its implementation. Further, such treatment is not the only control measure that will be brought to bear for the reduction of PCBs and mercury from MS4s. Indeed, sufficient progress toward load allocations will be dependent on intelligent implementation of all relevant control measures. The purpose of the specific load reduction performance criteria for green infrastructure is to motivate efforts in this area and not to suggest that this is the scale of reductions from this source category that will ultimately be necessary to help achieve wasteload allocations.</p>	None

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					<p>As we explained in the Fact Sheet, the year 2040 is used in the context of a planning horizon for the implementation of green infrastructure. Because mercury is distributed throughout the urban landscape, extensive implementation of green infrastructure elements will be necessary to achieve the load reductions required by the TMDL. However, the planning, financing and implementation of green infrastructure will take a long time, perhaps as much as 25 years or more, thus, the load reduction benefits will also be realized over an extended time. To ensure Bay Area municipalities are working expeditiously to implement appropriate green infrastructure controls to reduce loads of mercury, PCBs and other pollutants, the Tentative Order proposes Permittees prepare a reasonable assurance analysis to quantitatively demonstrate that mercury load reductions of at least 10 kg/yr throughout the Permit area will be achieved over the course of the next 25 years (i.e., by 2040) through implementation of green infrastructure. The Permittees are still required to attain the mercury (and PCBs) wasteload allocations by the deadlines set forth in the TMDLs.</p>	

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Brentwood Oakley Belmont Berkeley	2 5 30 12	C.12.f	No clear pathway to compliance – demolition uncertainty	The Tentative Order provides no clear path for Permittees to avoid noncompliance. 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.	In response to this and similar comments, the TO and Fact Sheet have been revised to state that Permittees will receive a PCB load reduction value of 2 kg/yr for developing and implementing a protocol to ensure PCBs from building materials do not discharge into storm sewers during demolition, regardless of the occurrence of demolitions within their jurisdictions. The Permittees do have control over the development and implementation of a protocol to ensure that controls are in place for applicable buildings that could contain high concentrations of PCBs. The timing of redevelopment is not pertinent to receiving a PCB reduction value for developing and implementing the building material protocol.	The TO and Fact Sheet have been revised as set forth in the response.
Brentwood Oakley	3 5	C.12.f	Demolition program development	The City 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.	As stated above, the Tentative Order does provide a PCB load reduction value for establishing and implementing a protocol to manage PCBs in building materials so that they do not enter storm drains. Beyond that, the Fact Sheet contains the accounting method for quantifying load reductions through controlling actual demolitions for the next permit. The Tentative Order does not require “applying controls to a specified number of buildings demolished” because it is	none

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Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
Brentwood Oakley	4 6	C.12	No clear pathway to compliance	The City ask that development of a program to systematically identify and review potential sources, and refer them to appropriate agencies for abatement, should be the basis for credit toward compliance.	The commenter does not suggest appropriate agencies for abatement. Nonetheless, it is not intended that municipalities take on the control of PCBs, as that will likely be the domain of the demolition contractor, following established BMPs, at a minimum. Municipalities would be responsible for ensuring that such requirements were carried out, as they do with a variety of requirements at the time of demolition. Basing permit compliance on the mere identification and referral of properties for abatement is not sufficient accountability to ensure that load reductions will be realized.	None
Brentwood Oakley Belmont Brisbane Burlingame San Bruno San Mateo San Jose Mountain View ACCWVP CCCWVP SCVURPPP	5 7 30 18 31 31 25 50 20 61 76 69, 79	C.12	Finalize PCBs accounting scheme prior to permit adoption	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. The City ask that BASMAA's PCBs programs accounting methodology be finalized, incorporated into the permit, and then used to calculate PCBs load reductions	The Fact Sheet has been revised to include load reduction accounting information for most PCBs and mercury load reduction control measures. The deliverable mentioned in the comment is now due in June 2016 and will focus on supporting information for the accounting factors provided in the Fact Sheet as well as providing details as to the information sources used by Permittees in performing the load reduction accounting calculations.	Revised Fact Sheet to include more mercury and PCBs load reduction accounting factors. Revised Tentative Order such that the

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Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
				during Permittee annual reporting.		deliverable regarding the accounting system is due in June 2016 rather than April 2016
Brentwood Oakley Clayton Concord Danville El Cerrito Hercules Lafayette Martinez Orinda Pinole San Pablo San Ramon CCCWP SMCWPPP	6 8 31 14 14 20 11 14 17 11 7 9 17 5, 25 1	C.12	No numeric requirements for compliance determination	The City 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.	See response to ACCWP Legal #5A and 5B and Brentwood #2. It appears that the commenters largely object to the accountability mechanism in this permit stated as a numeric load reduction requirement. Many commenters have called for a "clear and feasible pathway to compliance", but they have not been very clear on what this means. There have been some suggestions that compliance should be based on simply establishing a program of implementation or even doing some implementation – and that Permittees who establish and implement a program should be deemed "in compliance". This approach, however, is highly subjective and falls far short of meeting the Water Board's needs to ensure that actions are being carried out to reduce loads of PCBs. The Water Board has a responsibility to implement the PCBs TMDL, and this responsibility is very difficult to meet if we are not clear on	None

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Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
Baykeeper	39	C.12	Interim limit should be enforceable	The Draft MRP should be clear that interim limits are enforceable.	the expectations for load reduction performance from stormwater programs. One of the virtues of a numeric load reduction approach is that it is not subject to multiple interpretations. The Fact Sheet describes how load reduction value can be calculated in a technically sound manner for a variety of control measures. Achieving these load reductions will be challenging, but Permittees can estimate the scale of activities that will be required at the outset and plan accordingly to accomplish these reductions. The commenter mentions an interim limit in the context of PCBs. We are unsure what the commenter is referring to. If the commenter is referring to interim TMDL loading milestones, then there are no such interim loading milestones in the PCBs TMDL. If the commenter is referring to short-term loading reduction requirements, these are already included in the Provision and are enforceable.	None
Baykeeper	40	C.12	Monitoring to determine compliance	Assessment methodology used to determine compliance with waste load allocations must be supported by actual stormwater sampling data and not be purely theoretical. Moreover, the calculation of anticipated	See response to Baykeeper #33	None

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				reductions in PCB loads is based purely on modeling, which the Fact Sheet states will be updated if necessary. Yet, without actual stormwater discharge monitoring, there is no way to judge whether the control measures were effective or the modeling properly calculated reductions.		
Baykeeper	42	C.12	No credit before full implementation	The MRP should delete the provision that allows Permittees to count load reductions for control measures that are not yet operational.	See response to Baykeeper #37	None
Baykeeper	43	C.12	Require explanation of pollution controls and costs	The MRP should be clear that MEP requires implementation of control measures that are technically feasible, unless costs are "wholly disproportionate to the potential benefits," and Permittees should be required to show this analysis to the Regional Board.	See response to Baykeeper #36	None
Baykeeper	44	C.12	Clarify creditable load reductions	We are unclear under what circumstances load reductions would have been achieved under the 2009 Permit term, but not credited, and how verification of such load reductions would be made to appropriately credit during under the new MRP. The PCB load reduction assessment report includes reporting on PCBs load reductions "achieved	It is well understood that such load reductions refer to stormwater load reductions only. The commenter does not suggest any other type of load reduction. If perhaps the commenter is referring to air deposition, we do not provide a method for calculating this, and it has not been mentioned over the course of discussions with Permittees spanning over 5 years.	None

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				through other relevant efforts not explicitly required by the provisions of this permit." We ask that this be clarified to apply only to stormwater load reductions.		
Baykeeper	45	C.12	Clarify use of 2040 for GI load reductions	Again, we question the benefit and appropriateness of targeting year 2040 for demonstration of PCB load reductions through green infrastructure implementation when the TMDL waste load allocation should be achieved by 2030. We, of course, support further load reductions after the 2030 load allocations are attained, as would result from these provisions. However, we believe interim and final targets for green infrastructure leading up to year 2030 would be appropriate.	See response to Baykeeper #38.	None
Belmont Brisbane Burlingame San Bruno San Mateo El Cerrito	12 4 13 13 10 7	C.12	Creditable projects for GI reductions	Requested Revision: 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 PCB and mercury load reductions, and that constructed public GI projects within the permit term are not required for compliance with GI pollutant load reductions.	In response to this comment, we have added language in C.11.c and C.12.c that makes it clear that green infrastructure projects on private and public lands can count toward the load reduction requirements.	Made explicit that public and private green infrastructure projects count toward fulfillment of load reductions stated in C.11.c and C.12.c

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Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
Belmont Brisbane Burlingame San Bruno East Palo Alto San Carlos CCCWP SMCWPPP SCVURPPP SCVURPPP Emeryville	27, 28 15 28 28 10 8 7 65, 66 5, 64 65 104	C.12	PCB general. Many issues	<p>No controls identified to-date are particularly cost-effective, apart from the 1979 ban by USEPA on PCBs manufacture, import, export, and distribution in commerce in the United States.</p> <p>Most identified hot spots are associated with properties that are currently under cleanup orders or are currently permitted by these agencies or could be in the future. These sites are generally outside of the control of local agencies.</p> <p>The rate at which buildings are demolished and redevelopment occurs, and therefore the timeframe for reduction of PCBs associated with these sources and areas, is generally out of the control of local agencies.</p> <p>This lack of control over redevelopment and demolition, and the unknowns about the extent and magnitude of additional "hot spots" creates a high level of uncertainty in the level of implementation that cities and counties can commit to during the next five year permit term.</p> <p>In turn, the uncertainty in</p>	<p>We disagree with the assertion that no cost effective control measures for PCBs and mercury have been identified. These include: green infrastructure implementation, retrofits or other treatment controls, street sweeping, storm drain cleanout, street flushing, pump station cleanout, protocols to control PCBs in demolition material, recycling of mercury-containing devices, cleanup contaminated properties, PCBs and mercury removal associated with trash capture devices, among others.</p> <p>See the response to comment Brentwood #2 regarding the way in which the permit now accounts for the variability of building demolition.</p> <p>See the response to ACCWP 5A regarding the relationship between the pace of redevelopment and the achievement of expected green infrastructure load reductions.</p> <p>See response to ACCWP Legal 5A and 5B and Brentwood #6 on the pathway to compliance.</p> <p>The grant funding that was made available during the last permit term was made available precisely because there were permit requirements that allowed Permittees to demonstrate a</p>	None

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Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
Belmont Brisbane East Palo Alto San Bruno Burlingame San Mateo	29 17 20 30 30 24	C.12.a	Schedule unrealistic	<p>implementation creates compliance uncertainty when compliance targets in the permit include assumptions regarding the rate of redevelopment and demolition.</p> <p>Our overarching concern is that Provision C.12 continues to fall well short of providing Permittees with a clear and feasible pathway to attaining compliance with this load reduction requirement. It is also important to note that the level of effort and associated resources required to implement Provision C.12 as set forth in the Tentative Order is highly uncertain.</p> <p>Much of the cost of implementing PCBs control programs during the current permit term was offset by a grant from USEPA that will end in 2016. The availability of grant or other funding for implementing Provision C.12 of the reissued permit is unknown.</p>	<p>need to take actions that required support.</p> <p>We have crafted permit requirements entirely consistent with the mercury and PCBs TMDL. Achieving the TMDL wasteload allocations does require aggressive efforts. The requirements in this Tentative Order are reasonable and achievable (see memo: <i>Basis for Required PCBs Load Reductions in MRP 2</i>, February 23, 2015), provided that Permittees commit to action and implement effective control measures during the entire permit term.</p>	C.11.a.iii(1) and C.12.a.iii(1) is now a progress report on
				Due dates for deliverables for C.12.a.iii(1) and C.12.a.iii(2) are unrealistic and should be moved to the 2017 Annual Report. East Palo Alto requested that	In response to these comments, we have extended several reporting dates; however, the suggested 2020 reporting is unreasonable. Still, Permittees must rapidly identify the	

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Mountain View San Jose ACCWP CCCWP SMCWPPP SCVURPPP	18 48 60, 62 8, 74 68 67, 83			these deadlines be moved by to either the 2020 annual report or the end of the permit term.	watersheds and management areas where they will take action and identify the control measures that will be implemented. Waiting more than a year for such information (as commenters request) makes it difficult if not impossible to assess whether Permittees will be on track to achieve required load reductions.	identifying watersheds and management areas due in April 2016. The complete list of watersheds and management areas is now due with the 2016 Annual Report.
Belmont Brisbane Burlingame San Bruno San Mateo San Jose Mountain View CCCWP SMCWPPP SCVURPPP	31 19 32 32 26 51 21 5 69, 70 70, 80	C.12.b.iii	Load reduction methodology	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.	In response to this comment, the default accounting method is in the Fact Sheet to account for load reductions from control measures for PCBs in building materials as well as all of the land use-specific mercury load yield information. The deliverable is still necessary in that Permittees must provide information supporting the land-use yield information. In addition this June 2016 deliverable must include the details of how Permittees will perform the calculations to account for mercury and PCBs load reductions from all types of control measures that could conceivably be used for the reduction of these pollutants. This information includes	Revised C.11/12.b.iii to state that Permittees may submit alternative load reducing accounting factors differing from those presented in the Fact Sheet. Revised the Fact Sheet to contain nearly all of the

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Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
<p>Belmont Brisbane Burlingame San Bruno San Mateo Mountain View San Jose San Mateo Co. Cupertino SCVURPPP SMCWPPP</p>	<p>32 20 33 33 27 22 52 10 7 71, 81 4</p>	<p>C.12.a,c</p>	<p>Effluent Limits</p>	<p>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. Requested Revision: PCBs load reduction performance criteria should be in the form of Numeric Action Levels or a similar mechanism for triggering</p>	<p>what data will be used to assign treated areas, how to assign land use to select a yield, how material will be sampled to determine the contaminant concentration (for control measures requiring such information). Permittees should also identify the types of supporting information that will be submitted so that the calculations can be reproduced.</p>	<p>information needed to compute load reductions based on mercury and PCBs control measures and to more clearly explain the type of information that still must be included in the submittals required under C.11/12.b.iii(1)</p>
				<p>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. Requested Revision: PCBs load reduction performance criteria should be in the form of Numeric Action Levels or a similar mechanism for triggering</p>	<p>There is no ambiguity that the PCBs load reduction criteria are numeric effluent limits and are enforceable. If these effluent limits are not achieved, the Board has a wide variety of enforcement tools available as well as discretion in applying these tools depending on the circumstances of non-compliance. Numeric effluent limits are necessary to ensure that Permittees undertake enough actions to meet the TMDLs. They are also achievable because they are based on what the Permittees submitted under the existing permit.</p>	<p>None</p>

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Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
				<p>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.</p>	<p>See also the response to the comment ACCWP Legal #5B.</p>	
<p>Belmont Brisbane Burlingame San Bruno San Mateo San Jose San Mateo Co. Mountain View ACCWP CCCWP SMCWPP SCVURPPPP SCVURPPPP</p>	<p>33 21 34 34 28 49, 53 11 19, 23 59 8, 72 72 68, 72 83</p>	<p>C.12.b.iii</p>	<p>Permittee-specific load reductions</p>	<p>Although Permittees and the RMP have spent considerable time and resources 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. Assigning Permittee-specific responsibilities with high levels of uncertainty upon which compliance could be based is not good public policy. Delete requirement to develop and submit Permittee-specific proportions of load reduction responsibilities.</p>	<p>The Fact Sheet and TO describe a default approach for assigning load reduction responsibility to individual Permittees. It is necessary to have accountability for load reductions at the Permittee level because the responsible entities for the permit are individual Permittees (municipalities) rather than counties. The default approach is based on population because it is consistent with how the county-level wasteload allocations were derived in the TMDL. The permit provides the opportunity (but not requirement) for Permittees to develop and submit an alternative method of establishing the Permittee-specific load reduction responsibilities.</p> <p>See also the response to the comment ACCWP Legal #4.</p>	<p>Clarified that the Permittees may submit an alternative method for Permittee-specific load reductions, but that it is not a requirement to develop such an alternative. The due date for this alternative method is the 2017 Annual Report. Permittees may also suggest an alternative</p>

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Belmont Brisbane Burlingame San Bruno San Mateo Co. San Mateo San Jose East Palo Alto Mountain View Dublin CCCWP SMCWPPP SCVURPPP	34 22 35 35 12 29 54 21 24 17,19 77 73 73	C.11.c and C.12.c	Delete GI load reduction requirements	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 GI 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 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	We disagree that the requirement for a modest load reduction from implementing green infrastructure should be deleted. The absence of such a driver would logically reduce the motivation to expeditiously plan and install green infrastructure facilities. The load reduction requirement is not onerous and data from the previous permit term indicate the requirement can be met. See also response to Belmont comment #1.	method for allocating Permittee-specific load reduction value for C.12.f implementation in the 2019 Annual Report.

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				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. Requested Revision: Provision C.12.c should be deleted.		
Belmont Brisbane Burlingame San Bruno San Mateo Mountain View San Jose SMCWPPP SCVURPPP	35 23 36 36 30 25 55 74 74	C.12.c	Scale of future GI load reductions	It does not make sense to prejudice 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. Requested Revision: Provision C.12.c should be deleted.	We disagree and refer the commenter to our response above. In addition, given the scale of load reductions necessary to achieve the 18 kg/yr area wide from urban runoff and more than 14 kg/yr from the MRP area, load reductions of at least 3 kg/yr through green infrastructure are likely going to be necessary. Moreover, information submitted (in the 2014 Integrated Monitoring Report) by MRP Permittees suggests that a large portion of PCBs are found in moderately contaminated areas – perhaps 50% or more of the total load (McKee and Yee 2015). Application of green infrastructure treatment is a feasible way to address such moderately contaminated areas. The modeling and further study conducted through the reasonable assurance analysis should shed more light on the scale of expected reductions, but 3 kg/yr is quite reasonable in terms of what is currently known about the distribution of PCBs in the landscape.	None

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Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
Belmont Brisbane Burlingame San Bruno San Mateo Co. San Mateo Palo Alto San Jose San Carlos Mountain View BASMAA CCCWP SMCWPPP SCVURPPP Emeryville	36 24 37 37 13 31 6 13, 56 10 26 13, 14 78 76 75, 82 105	C.12.f	PCBs Building Materials	<p>We are not aware of data regarding the amount of PCBs released during demolition and then mobilized into the MS4, making it challenging to project with any certainty the actual water quality benefit of the proposed control program. Cost-effectiveness relative to other PCBs controls is also highly uncertain at this time.</p> <p>The 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. Meeting the Tentative Order's three year timeframe to develop a program to manage PCBs in building materials 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 addressing the problems. It would also likely result in inconsistent programs across the Bay Area. Allow at a minimum the entire permit term for Permittees to work with the State, U.S. EPA,</p>	<p>Regarding the water quality benefit: The Permittees established in their Integrated Monitoring Report (2013) the very large mass of PCBs likely present in Bay Area buildings, and a grant-funded project completed by the Permittees demonstrated through the literature the link between PCBs in buildings (particularly caulk) and PCBs in the environment. While demolition projects in the Bay Area have data showing PCBs in soils on-site, to date these projects have not been required to sample in the MS4. Studies by Herrick found PCBs in dust inside buildings at 1-81 ppm (2005) and in soil at 3-34 ppm surrounding buildings with PCB-containing caulk (2007), indicating PCBs are in the environment even when demolition is not taking place. Given these facts, we conclude with reasonable certainty that PCBs in building materials are a significant, and controllable, source of PCBs in urban runoff.</p> <p>Regarding cost-effectiveness: There are 3 factors to consider, in addition to the costs of other PCBs controls. First, no capital costs are involved. Staff recognizes that Permittee staff time will be needed to establish the PCBs in demolition control protocol, which can be built upon existing construction</p>	None

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				<p>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, U.S. EPA should play a large role in development of this program.</p>	<p>debris and demolition permitting programs, using materials generated in the grant-funded program. Presumably, staff time will be needed for other PCB control methods as well, although perhaps to a lesser degree. Second, in many but not all municipalities, the number of potential PCB-containing buildings will be small, or none, and thus the workload will be likewise small. Third, the potential load reduction from PCBs in building material is far greater than from any other source, and possibly greater than from all other sources combined.</p> <p>Regarding allowing the entire permit term for Permittees, U.S. EPA, State and building industry stakeholders to establish a demolition control protocol: We disagree that this is the best and only way to develop such a program. The buildings containing PCBs are already under the jurisdiction of Permittees and receive permits for demolition and building activities that could feasibly include elements to address the materials containing PCBs so that they are not discharged into storm sewers. Developing this protocol locally allows Permittees maximum control. There is no guarantee that a program would be developed at a state and federal level, and the consequence</p>	

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<p>San Mateo County Belmont Brisbane Burlingame San Bruno San Carlos San Mateo Mountain View San Jose CCCWP SMCWPPP</p>	<p>8 28 16 29 29 9 23 17 47 50 5 5, 67</p>	<p>C.12.a</p>	<p>Numeric Performance Criteria</p>	<p>Focus on implementation of PCBs control programs: 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, based on an interim accounting method. The target would be informed by what the BMP programs could achieve, based on the accounting system, which should be agreed upon by the Permittees and the Water Board upfront and incorporated into the permit. At a minimum, the revised permit should specify actions identified in June 10, 2015 Staff Summary Report, such as: •Control of PCB-containing wastes during building demolition; •Storm drain and street cleaning in areas with high PCB levels; •Cleanup and referral to the</p>	<p>of such inaction is that this source would remain unaddressed and Permittees would forego an opportunity to address a likely source of PCBs loading into their storm sewers and waters of the U.S. Regarding the request that load reduction performance criteria should not be the point of compliance, see the response to Brentwood comment #6. Regarding requiring implementation of PCBs controls instead of numeric load reductions, see responses to comments Berkeley 8/ACCWP 7. Regarding agreeing on an accounting system upfront, we have changed the Fact Sheet in response to this comment. We disagree with comments regarding specifying control actions, although we retain the control of PCB-containing wastes during building demolition so that they do not discharge into storm drains as requested. Beyond that, Permittees may pursue any of the other suggested control measures to control loads of PCBs and mercury. Permittees must also document the load reductions from these activities to reduce loads by the amounts required by the permit.</p>	<p>The Fact Sheet has been revised to include more mercury and PCBs load reduction accounting factors.</p>

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				<p>Water Board for cleanup of sites contaminated with high levels of PCBs;</p> <ul style="list-style-type: none"> •Diversion of first-flush stormwater runoff and dry weather flows to the sanitary sewer; and •Green infrastructure retrofit of streets and storm drain systems. <p>As recommended By SFEI, the County recommends that the Water Board allow source control actions that result in:</p> <ul style="list-style-type: none"> •A large amount of PCBs and total mercury being removed from as few locations as possible. <p>Thus it is important to find as many high leverage properties and source areas as possible.</p> <ul style="list-style-type: none"> •Potential multiple benefits - for example both PCBs and Hg pollution or other pollutants such as trash or unsightly housekeeping that can be dealt with at the same time •Clear connection between the in situ pollutant and stormwater conveyance -for example evidence of off-site transport from the polluted area directly to a municipal storm drain inlet or some other conveyance system. 	<p>Permittees have the flexibility to choose the optimum suite of control measures given the particular circumstances in their jurisdictions. The Water Board is not specifying this suite of control measures, but rather the numeric performance criteria (effluent limitations).</p>	

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Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
Daly City	7	C.11/12	General Approach	<p>Numeric permit limitations have no place in a stormwater permit which is premised upon application of Best Management Practices. PCBs and Mercury are legacy pollutants. PCBs are widely dispersed into soils and sediments. Efforts within the Bay Area have identified a small number of "hot spots" which are under separate clean up orders from other agencies including the Regional Board, EPA and DTSC. Mostly, these sites are generally out of the control of local agencies. Now, local agencies must contend with a Tentative Order which is highly uncertain yet places agencies at considerable risk should numeric limits not be achieved. The issue of PCBs and Mercury is much larger in scope than MRP 2.0 and the compliance pathway expected by Regional Board staff is less than clear.</p>	<p>Numeric permit limits are appropriate for stormwater permits, especially when there is a TMDL requiring specific load reductions that are expressed in numeric fashion and numeric effluent limitations are feasible, as is the case for mercury and PCBs. There is nothing inherent about a stormwater permit that one can suggest that all stormwater permits must be premised upon the application of best management practices. The Water Board is not constrained from crafting permit requirements that go beyond mere application of such management practices in order to meet legal requirements, such as implementing a TMDL.</p> <p>See also the response to Brisbane comment #15</p>	None
Daly City	8	C.12.f	Building Materials	<p>The load reductions sought should at the very least be incorporated into a Best Management Practice when suspect buildings are demolished.</p> <p>The extent of PCBs in caulking or</p>	<p>While BMPs to address PCBs during building demolition exist and may be incorporated into the demolition process for applicable buildings, the Tentative Order requires Permittees to develop a protocol to manage applicable structures with PCBs during demolition</p>	None

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East Palo Alto	4	C.11/12	PCB and Mercury General	<p>weatherproofing is unknown. Equally unknown is when such buildings would be demolished. At the very least, a Best Management Practices approach could serve as an equivalent method to bridge how such legacy pollutants can be addressed to serve water quality concerns.</p> <p>PCB and Mercury provisions-as indicated in the TO create significant hurdles that will require more extensive planning with an unknown horizon; it is unlikely significant pollutant load reduction can be accomplished during the permit term. Due to this steep planning and funding development curve, the Water Board should include an extended planning schedule with modest or no pollutant load reduction requirements, but rather "goals," which, if voluntarily met, can count toward overall pollutant load reduction in future permit terms, in a similar manner to the trash load reduction credits, previously provided to encourage and reward product bans.</p>	<p>so that PCBs do not enter municipal storm drains. The protocol can ensure that BMPs get implemented. See also the responses to Brentwood comment #3 and Brisbane comment #15.</p>	
					<p>The Water Board is responsible for implementing the mercury and PCBs TMDLs, both of which call for significant load reduction requirements for storm water Permittees. The suggestion of the commenter that we should rely on the voluntary achievement of unenforceable load reduction goals is not an adequate accountability mechanism to ensure that Permittees are making sufficient progress toward achieving what the TMDLs require in terms of load reduction.</p>	None

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Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
East Palo Alto	19	C.12	General	<p>The City lacks control over a timeframe for redevelopment and demolition of existing buildings; this creates uncertainty in the level of implementation that East Palo Alto can commit to. This provision assumes clarity of future development opportunities, which does not exist in East Palo Alto, which has infrastructure deficits preventing development (primarily drinking water and deficient storm drainage systems).</p> <p>Provision C.12 uses two approaches, requiring: 1) BMP implementation and 2) pollutant load reduction. Required BMPs are Green Infrastructure and managing PCBs during building demolition. The City relies on Countywide programs and regional campaigns to ensure these types of waste are source separated. While the City could require, through updated policies, that applicants provide evidence of appropriate disposal of these materials, the City does not have the capacity to determine whether a particular building is a potential risk. The City would rely on outside agency such as San Mateo County lead abatement</p>	<p>Regarding the lack of control over the timeframe of redevelopment, see the response to ACCWP Legal #5A and Brentwood #3.</p> <p>Regarding the workload associated with addressing the large reservoir of PCBs associated with building materials, see the response to Belmont comment #36.</p> <p>All of the Permittees have the same requirement so it is not expected or desired that East Palo Alto or San Mateo County should be tasked with figuring out the optimum program and approach for addressing PCBs in building materials. Permittees are encouraged to work together and share resources.</p>	None

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				<p>program to ensure proper disposal of this material. These details require research to determine an approach that will not create substantial impact to demolition and removal of these buildings. The timeframe given is unlikely to be within reach for San Mateo County, which is already overburdened and understaffed.</p>		
BASMAA	10	C.12	Pathway to compliance	<p>There is a lack of clear and feasible pathway for Permittees to attain compliance with the load reduction requirements. Most key factors in meeting the mandated load reduction are uncertain and many are not within Permittees' control – making achievement of compliance uncertain. These factors include: PCBs are legacy pollutants, long-lived and ubiquitous, at low concentrations, which makes traditional stormwater treatment (non-green infrastructure) expensive and likely ineffective. The Water Board-recommended BMP (Manage PCB-containing Materials and Wastes During Building Demolition) is opportunistic and yet existence of opportunities is uncertain and dependent on factors not within</p>	<p>On the topic of factors being under the control of Permittees, please see the response to ACCWP Legal #5A and 5B and Brentwood #6.</p> <p>On the topic of the lack of control of Permittees concerning building demolition, see the response to Brentwood #2.</p> <p>On the topic of accounting methods to assess performance, see the response to Brentwood #5.</p> <p>On the topic of the numeric effluent limits in the permit, please see the response to SCVURPPP Legal #7B. For more information on the topic of a pathway to compliance, see the Fact Sheet discussion for C.12.</p>	

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BASMAA CCCWP	11 5, 6	C.12.a	Action Levels and Compliance	<p>Permittees' control (e.g., extent of source properties found, building demolition rates, redevelopment rates). There is no agreed-to accounting method to assess performance.</p> <p>Despite all of these uncertain and uncontrollable factors – intractable problem, no clear solution (BMP), and no agreed-to measure of success – staff is proposing to commit Permittees to a specific regulatory performance level (Kg/year reduced) or “load reduction performance criteria”. This is the antithesis of a clear and feasible pathway to compliance. Regional Water Board staff has acknowledged that load reduction performance criteria are not effluent limits. This should be made clear in the permit. PCBs load reduction performance criteria should be in the form of action levels, i.e., levels set at a typical performance level and which require action when the level is triggered or not met.</p> <p>Replace the load reduction performance criteria with a Numeric Action Level (NAL). Base compliance upon</p>	See the response to SCVURPPP Legal #7A for the topic of action levels vs. effluent limitations. We also note that the Fact Sheet does contain a complete	None

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BASMAA	12	C.12.f	PCBs in building materials	<p>implementing PCBs control programs designed to achieve a NAL, using an interim accounting method included in its entirety in the permit and applicable for at least the term of the permit, and taking specified actions if the NAL is triggered.</p> <p>Based on Bay Area sampling and similar sampling in other areas, there appears to be a large standing stock of PCBs in certain buildings in the Bay Area, sometimes at concentrations that would likely exceed California hazardous waste levels. There is also a potential health risk to workers (e.g., at a demolition site) or building occupants exposed to PCBs in building materials. These problems are common to urban areas throughout the country. We don't know whether or not PCBs in building materials is a significant water quality issue. However, addressing the various potential problems associated with PCBs in building materials appears to be a worthwhile and "no regrets" cause.</p>	<p>accounting methodology for foreseeable control measures. Basing compliance on numeric action levels, which have no clear consequences associated with non-attainment, does not provide the Water Board with an adequate accountability mechanism to ensure that the strongest efforts will be undertaken to achieve PCBs load reductions.</p> <p>We agree with this comment, which appears to support the proposed requirement at C.12.f of the Tentative Order, and we agree that addressing PCBs in building materials appears to be a worthwhile and "no regrets" cause. We also agree with the commenter's observations regarding potential health risks and waste disposal issues, and we are aware that such issues must be addressed to the appropriate extent during development of a program to control PCBs during demolition.</p>	None

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San Mateo Co.	9	C.12.a.iii	Extend reporting timelines	Extend the deadlines for reporting and align timeline with the GI planning time frame. The County recommends a modified timeline to allow for more time to collect additional data, to confirm sources, and to plan GI projects as required by C.3. An adjusted timeline is necessary to prepare for implementation and assessment.	We agree to extend the deadline for the list of watersheds or management areas. See the response to Belmont #29. The reporting for C.12.a is more than just about green infrastructure. It is necessary for Permittees to report on where they are going to address PCBs as well as how. There is ample information available now to report on where actions will take place. Permittees must work quickly to develop the approach for how to address PCBs contamination in those areas and report that per the permit requirements. The permit also provides an opportunity to update this information (reported under C.12.a.iii(1,2) in subsequent annual reports.	Extend due date for list of watersheds or management areas for PCB control implementation
San Jose SCVURPPP	14 4	C.12.a	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	The Permittee-specific load reduction criteria are based on population, and this is consistent with the population-based PCBs TMDL wasteload allocations for countywide programs. Permittees have an opportunity to propose an alternative means of computing the Permittee-specific load reductions under C.12.b.iii(2). There is no contradiction as alleged in the comment. The permit presents a tiered approach to determining compliance. This is explained in the Fact Sheet and provision. The provision	None

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				<p>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.</p>	<p>must be read in its entirety. The commenter does not explain exactly how the “uncertainties and assumptions in the accounting methodology do not allow for a clear path to compliance” so a response is not possible. See also the response to Brentwood #6 on this topic.</p> <p>The Fact Sheet explains how a Permittee may show compliance by undertaking a sufficient number of control measures, tallying up the load reduction credit according to the procedures explained in the Fact Sheet. The required load reductions are meaningful and achievable (see memo: <i>Basis for Required PCBs Load Reductions in MRP 2</i>, February 23, 2015).</p>	

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San Jose	15	C.12.c	GI load reductions	<p>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 Jose, it is unclear whether additional projects can be funded and sited appropriately to achieve reduction goals.</p> <p>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.</p>	<p>See response to ACCWP Legal #5A.</p> <p>Regarding the requested revision, please see the response to Berkeley Comment No. 8/ACCWP No. 7.</p>	None
Santa Clara Co.	2	C.11/12.c	GI load reductions	<p>The County objects to (2) the method for assessing the County's progress towards meeting PCB and Mercury Load reductions vis-a-vis the GI retrofit projects implemented.</p>	<p>The commenter has not proposed an alternative means of assessing progress toward meeting the PCBs and mercury load reductions. See also the response to San Jose #15 and ACCWP Legal #5A.</p>	None
Santa Clara Co.	3	C.11/12.c	Redevelopment opportunities	<p>The County provided oral testimony at the June 10, 2015, Water Board Public Workshop regarding: The few</p>	<p>The modest load reductions called for from green infrastructure can be achieved through implementation of green infrastructure on both public and</p>	None

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Santa Clara Co.	4	C.11/12.c	No good GI opportunities	<p>redevelopment opportunity areas within unincorporated Santa Clara County where private development projects could make significant contributions towards the total area retrofitted with Green Infrastructure.</p> <p>The infrastructure managed by the County, such as hillside residential streets, freeway- like expressways and rural and semi-rural parklands may not provide good opportunities for GI retrofit projects, particularly those that would address Mercury and PCB sources as the TO envisions.</p>	<p>private projects.</p> <p>Santa Clara County's landscape is similar to other counties of the Bay Area, and load reductions may come from both on public and private projects. The scale of load reductions required for this permit term is on the order of that achieved during the last permit term. Sufficient opportunities (C.3 treatment and other green infrastructure treatment) were found region-wide despite the difficulties described by the commenter. See also the response to ACCWP Legal #5A. The cities within Santa Clara County have many other types of landscape, and there are sufficient opportunities in Santa Clara county, considering this broader range of treatment modalities.</p>	None
Santa Clara Co.	5	C.11/12.c	GI load reductions	<p>The largest County facilities are located within the City of San Jose-not unincorporated Santa Clara County-and the TO provides no guidance as to whether the County or City would be credited for these retrofits. Such guidance is requested. The</p>	<p>The City of San Jose would receive value for those projects for the purpose of comparing load reductions to the Permittee-specific load reduction requirements. San Jose is part of Santa Clara County, so the Santa Clara Countywide Program would receive value for the purpose of comparing to</p>	None

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Santa Clara Co.	9	C.11/12	Vagueness	<p>County believes it should receive credit for these facilities since they are County owned and operated facilities which are oftentimes exempt from the City's building and land use authority.</p> <p>The TO imposes a vague and ambiguous path on the County's compliance with both Provision C.3 Green Infrastructure implementation and related C.11 Mercury and C.12 PCB reductions.</p>	<p>the countywide load reduction requirements.</p> <p>We disagree with this comment. The Tentative Order establishes an unambiguous performance metric for load reductions through green infrastructure, and the Fact Sheet clearly describes how those load reductions should be evaluated based on the area treated by such projects. See also the response to Brentwood #6.</p>	None
San Mateo Co.	7.1	C.12.a	General	<p>The level of effort and resources required to implement Provision C.12 will be dramatically higher than the previous permit and the proposed timeframe is too short and does not align with what is proposed for development and implementation of the GI Plan. The lack of control over redevelopment and demolition will significantly affect the County's success with load reduction and the potential extent of the "hot spots," creates a high level of uncertainty in achieving the 3 kg/year load reduction performance metric and successful implementation of</p>	<p>We acknowledge that the level of effort and resources to implement Provision C.12 will be higher than last permit term, particularly in light of the grant funding Permittees received then. Implementing control measures is necessary to achieve the TMDL wasteload allocations. Very small PCBs load reductions were achieved during the previous permit term because the purpose was to test various control strategies. This permit term calls for an increased effort and implementing control measures where they may result in load reductions. This requires effort and resources.</p> <p>On the topic of timeframes and alignment with green infrastructure</p>	None

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				Provision C.12.	<p>plans, please see the response to San Mateo Co. #9.</p> <p>On the topic of lack of control over redevelopment, see the response to ACCWP Legal #5A.</p> <p>On the topic of "high level of uncertainty in successful implementation of C.12", Permittees have a range of control measures to reduce loads of PCBs. If all such opportunities are explored and the best are implemented, the load reductions can be achieved. This will require effort on the part of Permittees. The Fact Sheet explains how the load reduction benefits for each type of action will be evaluated.</p>	
San Mateo Co.	7.2	C.12.a	General	<p>Existing data, which is biased by targeted reconnaissance of suspected source areas, indicates that very few areas within San Mateo County contain significant concentrations of PCBs (greater than 0.5 parts per million).</p> <p>C.12 does not appear to be based on adequate data to identify target areas where significant load reduction will be achieved.</p> <p>The proposed C.12 requirements do not provide a clear and feasible pathway to attaining</p>	<p>We understand that San Mateo County does not have numerous old industrial areas. This is also the case of other counties. Please note that, Water Board staff learned in February of this year of a storm drain site in Redwood City that contained 7 ppm of PCBs, which illustrates that there are heretofore unknown opportunities for PCBs loads reduction. There is enough information to begin addressing these areas while continuing to look for more.</p> <p>Furthermore, a large share of the load reduction value can be secured through establishing effective controls on demolition of certain buildings.</p>	None

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				<p>compliance with the load reduction requirements since acceptable control measures are not established.</p>	<p>The scale of load reductions required in this permit is based on estimated load reductions achieved through pilot testing in the previous permit term and the expectation of modest increases of effort compared to last permit term.</p> <p>Regarding the comment about the permit not establishing acceptable control measures, please see the response to San Mateo County #7.1.</p>	
San Mateo Co.	7.3	C.12.a	<p>General, achieving load reductions</p>	<p>The County is aware of approximately 222 urban and/or nonurban storm drain sediment samples that have been collected during numerous investigations county-wide between 2007 and 2015. Of this data, less than 10 percent (only 20 samples) of data exceeded one part per million (ppm) and the average and median concentrations are 0.979 ppm and 0.079 ppm, respectively. Within unincorporated San Mateo County, only 13 sample points exist and none of the data exceeds one ppm. The average and median concentrations in unincorporated San Mateo County are 0.138 and 0.056 ppm, respectively. On the whole, the vast majority of data is low in concentration and may be difficult</p>	<p>Please see response to San Mateo Co. #7.2. The County is required to remove just 370 grams of PCBs per year by the end of the permit term. Approximately 2/3 of this could come from strong efforts to deal with building demolitions so that PCBs from these activities do not discharge into storm drains. This leaves a little more than 120 grams per year for the County. We anticipate that if San Mateo County implements control measures in the contaminated areas currently known and those discovered through the permit term, accounts for the load reductions through measures such as trash control, and accounts for the load reductions achieved through implementation of green infrastructure and other redevelopment-related treatment, then achieving these additional 120+ grams per year of load reduction will be feasible.</p>	None

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				to capture outside of the target areas.		
San Mateo Co.	7.4	C.12.a	Need more time	Development and implementation of control measures will require additional data, which takes considerable time. As part of the sample collection, monitoring performed in San Mateo County consists of samples that were collected in February 2015. The anticipated publication date of the report for that monitoring event is September 2015. Accounting for planning and work plan preparation, nearly a year was needed to conduct the latest round of monitoring, underscoring the need for additional time to effectively collect and evaluate data.	The requirements for information in C.12.a.iii(1) and (2) must be fulfilled early in the permit term to demonstrate that sufficient actions will be taken to achieve the required load reductions. If additional locations for implementation come to light after that 2016 Annual Report, Permittees may update the information in subsequent annual reports. The reporting deadline for reporting on management areas has been extended to the 2016 Annual Report.	Extend due date for list of watersheds/m management areas
San Mateo Co.	7.5	C.12.a	PCBs target areas	Significant PCB target areas need to be identified prior to implementing control measures in order to manage public resources effectively. The County is concerned about committing resources for load reduction without first identifying verifiable target areas, which may result in irresponsible expenditure of resources that do not contribute to improving the Bay. Sufficient data is critical to assigning	This comment covers the same issues as other San Mateo Co. comments. Please see the responses to San Mateo County comments #7.1 - #7.4.	None

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Palo Alto	3	C.11 and C.12	Attaining load reductions	<p>priority, funding, and jurisdictional obligation to specific cleanup/load reduction efforts. Attempting to reduce discharges from widespread areas of very low level PCBs will likely be difficult to capture, and is not anticipated to mitigate or offset the more significant PCB contamination existing in the Bay.</p> <p>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 implemented on private property is a significant concern and does not provide us</p>	<p>We disagree with the level of uncertainty expressed in this comment. The load reduction requirements were based on estimates of load reductions reported by Permittees in the December 2014 Integrated Monitoring Report with the expectation of increased levels of effort during this permit term.</p> <p>Regarding the fact that the City is in the process of determining whether properties with high PCBs exist, please see the response to San Mateo Co. #7.4.</p> <p>Regarding the lack of control over the pace of redevelopment as it relates to requirements for load reductions from green infrastructure implementation, please see the response to ACCWP Legal #5A.</p> <p>On the general topic of a clear path to</p>	

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				with a clear path to compliance with the permit.	compliance, please see the response to San Jose #14 and Belmont #6.	
Palo Alto	5	C11 and C12	Compliance	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.	The PCBs TMDL calls for load reductions from urban runoff of approximately 18 kg/yr by the year 2030. Since the TMDL was adopted five years ago, perhaps a little more than 1 kg/yr has been achieved. This permit requires that an additional 3 kg/yr of load reduction is achieved by the end of the permit term. These are very modest requirements given the scale of reductions necessary to achieve the TMDL. Permittees appear to have done very little planning for greater control measure implementation in advance of this permit term despite encouragement to do so by Water Board staff. Please see also the responses to San Mateo County #8.	None
Clayton Concord Danville El Cerrito Hercules Lafayette Martinez Orinda	27 10 11 17 8 11 13 8	C.12.f	Development of demolition program should be compliance	MRP 2.0 provides no clear path for Permittees to avoid noncompliance. Some examples include: A major means of achieving PCBs reductions is through removal of PCBs during building demolitions. However this Order	Please see responses to Brentwood #2 regarding control over demolitions and to Brentwood #3 regarding the Commenters' preference for a control program, rather than applying controls.	None

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Pinole San Pablo San Ramon Walnut Creek	3 5 14 8			fails to acknowledge that Permittees have no control over when properties redevelop. Development of a program to control PCBs during demolitions should represent compliance with this requirement, rather than applying controls to a specified number of buildings demolished.		
Clayton Concord Danville El Cerrito Hercules Lafayette Martinez Orinda San Pablo San Ramon Walnut Creek Pinole CCCWP	29 12 12 18 9 12 15 9 7 15 9 5 80	C.12	Abatement Program	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 bio-retention facilities, and for finding and abating concentrated sources of PCBs. Looking for hidden PCB sources is a good idea, but Permittees cannot guarantee it 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, become the basis for credit toward compliance.	In response to this comment, we have finalized the accounting method for PCB loads reduction. We disagree with the concept of loads reduction value for a PCB site referral program. The Tentative Order does not intend to encourage Permittees to look for PCB referral properties to such an extent that significant resources are expended with a result of zero load reduction. Load reduction value must have a closer connection to control actually being put in place to reduce loads of PCBs. For property referrals, some load reduction value can be applied when the property is referred provided that control measures are put in place to address the PCBs that may have migrated off site prior to referral. The Fact Sheet describes the way in which load reduction value will be derived associated with referral of contaminated sites.	The Fact Sheet has been revised to include more mercury and PCBs load reduction accounting factors.

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Clayton Concord Danville El Cerrito Hercules Lafayette Martinez Orinda Pinole San Pablo San Ramon Danville	30 13 13 19 10 13 16 10 6 8 16 13	C.12	Accounting program timeline	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.	See response to Brentwood #5.	None
Clayton Concord Danville Hercules Lafayette San Ramon Dublin El Cerrito	17 5 2 4 4 4 20 3	C.12.f	Funding for building materials program	The program to manage PCB-containing structures during demolition is a major new mandate & will require a significant, sustained effort to implement, absent any new or additional funding source. The most effective programs would be 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	Regarding this requirement comprising a new mandate, please see the response to SCVURPPP Legal #7G. Regarding the Commenters' preference for a region- or state-wide program, please see Belmont #36.	None

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Hayward	14	C.12.f	Building demolition program	<p>documentation that they have filed with the state prior to the issuance and closure of demolition permits;</p> <p>The City has no control over when and where demolition projects occur and limited oversight over the environmental evaluations in regards to these projects. Creating a comprehensive PCB-containing building program is going to require working with state and federal agencies. The City cannot be the lead agency for creating a federal or state PCB program for demolition. A comprehensive program analogous to current programs for asbestos and lead-based paint will likely take much longer than three years to create. The City needs more time to collaborate within the Alameda County-Wide Clean Water Program collectively to work with the state and federal agencies to regulate demolition projects.</p>	<p>On the topic of control over where and when demolition occurs, please see the response to Brentwood #2. The Water Board does not expect Permittees to exert control over the pace of demolitions and redevelopment, merely to ensure that proper practices are in place to stop the migration of PCB-contaminated sediment into storm drains when such demolitions occur.</p> <p>The Water Board is not asking Permittees to be the lead agency for creating a federal or state program. We are requiring you to create a locally administered program. See also the response to Clayton #17.</p> <p>Regarding the 3-year timeframe, please see the response to Berkeley #14.</p>	None
Moraga	7	C.11 and C.12	Green infrastructure installation	<p>To achieve its share of the County's load reduction based on population and land-use mass yields of PCBs in the Fact Sheet, the Town would need to install GI to treat runoff from approximately</p>	<p>The load reduction value can come both from the public and private implementation of green infrastructure treatment controls, including those associated with private redevelopment. The requirement is not for any particular</p>	None

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				10 acres in the last three years of the permit. This amount of green infrastructure would be cost-prohibitive and of limited benefit in reducing PCB loads in a suburban-rural town with no industry.	Permittee to install such treatment only on public property.	
Moraga	8	C.12	Small cities with few opportunities	While other municipalities in the County with high potential PCB source properties may achieve higher rates of PCB reduction and reduce the burden on municipalities with low PCB source properties such as Moraga, there is no guarantee.	We concur that some municipalities will have more obvious PCB reduction opportunities. The Tentative Order is structured such that each Permittee tries to do its part and address the sources it can control. Permit compliance is structured in such a way that all Permittees will be in compliance if the overall (region-wide) load reduction requirements are met. Counties may also be found in compliance if the county-wide share of the regional total is met. It is only when both the region-wide share and county-wide load reductions are not met that the Water Board would compare the performance of each municipality to the Permittee-specific reduction requirements.	None
Oakland	11	C.12.a	Compliance based on control measures	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	In partial response to this comment, we finalized the Fact Sheet's PCB load reduction accounting method (see Brentwood Comment No. 5). In response to the comment regarding implementation of PCBs control measures: This is problematic relative	Revised Fact Sheet to include more mercury and PCBs load reduction accounting

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				<p>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</p>	<p>to judging the sufficiency of actions. Please see the response to Brentwood #6.</p> <p>Staff notes that Board members explicitly stated in subcommittee report that there was adequate information in the Fact Sheet with which to calculate load reduction value for various types of control measures.</p> <p>We disagree with the summary of MRP 1.0 studies. There are control measures available (many evaluated during the previous permit term) that can result in significant PCBs load reductions if implemented aggressively. Please see the response to ACCWP Legal #5A.</p>	<p>factors.</p>
<p>Orinda Clayton Clayton</p>	<p>3 15 18</p>	<p>C.12.f</p>	<p>No buildings that contain high concentrations of PCBs</p>	<p>This municipality does not have any potentially high PCB-containing material properties. This requirement will significantly increase administrative costs and group costs associated with monitoring and abatement for cities such as the City of Orinda where PCB-co1.taining properties are less prevalent.</p> <p>Provide a "safe harbor" from per capita allocation for those Permittees that do not have structures subject to the PCB proposed regulation.</p>	<p>In response to this and similar comments, we added language to the Tentative Order stating that municipalities that provide evidence acceptable to the Executive Officer that no non-single-family-residential property developments pre-date 1980 are exempt from this requirement.</p>	<p>Added language to the Tentative Order stating that Permittees that provide evidence acceptable to the Executive Officer that no non-single-family-residential property developments pre-date 1980</p>

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U.S. EPA	2	C.11/12	Include TMDL milestones	<p>sooner than with the Annual Report in September 2019.</p> <p>EPA supports the Water Board's inclusion of specific numeric mercury -and PCB milestones and deadlines within this permit cycle. We recognize these pollutant specific values are interim milestones to achieve step-wise progress in this permit as well as to measure progress towards attaining the final TMDL wasteload allocations (mercury in 2028 and PCBs in 2030) which are included for reference in this permit. This is consistent with EPA guidance (2014) that MS4 permits implement WLAs as either numeric effluent limits or clear, specific, and measurable milestones for assessing required pollutant load reductions.</p>	Comment noted.	None
Berkeley ACCWP	2 1	C.12.a	Remove performance criteria	<p>The 0.5 kg/yr and 3.0 kg/yr PCB load reduction performance criteria should be removed. There is no certainty regarding the ability of best management practices (BMPs) to meet the proposed load reduction performance criteria. The Fact Sheet acknowledges that achievement of the performance criteria is speculative at this stage</p>	Please see the responses to ACCWP Legal #5A, SCVURPPP Legal #7B, and Brentwood #6.	None

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				<p>of load reduction methodology, and describes a default approach to estimating load reductions resulting from foreseeable control measures implemented during the permit term. Most BMPs evaluated during MRP 1 that were thought to have promise turned out to have very limited load reduction benefits. For example, it was thought that enhanced street sweeping and drop inlet cleaning, and diversion of stormwater flows to sanitary sewers, would be able to achieve significant reductions in PCB loads. Further study during MRP 1 has determined that this is not the case.</p>		
Berkeley	3	C.12.a	General	<p>Only two BMPs currently appear to have potential to significantly reduce PCB loads: source property identification and remediation, and managing PCB containing waste during building demolition. However, lack of reliable data and Permittees' inability to control all aspects of implementation mean there is no certainty that the stipulated load reductions could be achieved.</p>	<p>We do not concur that only two control measures have potential to reduce PCBs loads. Depending on the circumstances and nature of the contaminated management areas, a variety of control measures may be effective at removing PCBs or preventing their transport to receiving waters.</p> <p>In partial response to this comment, we have explained in the Fact Sheet the load reduction value that would be granted for both of the control measures</p>	<p>The Fact Sheet has been revised to include more mercury and PCBs load reduction accounting factors.</p>

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					<p>mentioned in the comment. Load reduction value is available at the time of referral of contaminated properties provided that Permittees effectively address contamination that has migrated from referred properties. Substantial load reduction value is available if Permittees ensure that demolition of buildings does not result in migration of PCBs-contaminated sediment into storm drains. Permittees do have the authority to ensure that such controls are put in place.</p>	
Berkeley ACCWP	4 2	C.12.a	Referred properties – accounting for load reductions	<p>Source Property Identification and Remediation: Through previous investigations, Permittees have identified several sites in old industrial areas with significant PCB contamination. Based upon this finding, we are currently conducting a screening of all old industrial parcels throughout the County, and conducting PCB analysis of sediment adjacent to the sites that appear to have the highest likelihood of being a PCB source property. Through this process we may find some sites that are significant sources of PCBs. However, the number of sites will probably be relatively low, and it will be difficult or</p>	<p>The Fact Sheet already contains an explanation of the load reduction value available for referred properties. It is not necessary to go through the exercise of estimating the load because an accounting method is already available for this purpose.</p>	None

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Commenter	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
Berkeley ACCWP	5 3	C.12.a	Building demolitions – uncertainty	<p>impossible to develop an accurate estimate of the annual load of PCBs from these sites in advance of their investigation and remediation under the direction of appropriate state and federal agencies.</p> <p>There is very little published data, a wide range of estimates that rely on personal judgment for key assumptions, and no studies of PCBs released from building demolition to storm water runoff. Developing an accurate estimate within several months (April 2016) or even several years is infeasible given the wide variation from site to site in the mass of PCB containing hazardous waste, the concentration of PCBs, the types of waste, the type and size of structure, the control BMPs implemented, and the type of demolition. The proposed 3 kg/yr load reduction relies heavily on the assumed load reduction from managing building demolition waste. This assumption is unfounded and cannot form the basis for a regulatory PCB load reduction requirement.</p>	<p>In response to this and similar comments, we edited the Fact Sheet to state the amount of PCB load reduction value available if controls are put in place on such buildings. This estimate is based on the data available currently on the amount of PCBs in these buildings and other local factors.</p> <p>It is not necessary for Permittees to develop an estimate for this quantity as suggested in the comment.</p>	<p>The Fact Sheet has been revised to include more mercury and PCBs load reduction accounting factors.</p>
Berkeley	6	C.12.a	Permittee-	The Draft Permit states that	In partial response to this and similar	Clarified that

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Committer	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
ACCWP	4-7		specific load reductions	<p>Permittees need to develop an allocation scheme or the default will be by population. Neither option is feasible. There are several problems with developing an alternative load allocation among Permittees in addition to the unrealistic timeframe (i.e., April 2016): (1) There is no legally binding mechanism to reallocate loads; and (2) Permittees whose allocation would rise under an alternative allocation could not agree to a higher allocation and put their jurisdiction in jeopardy of non-compliance when there is no certainty regarding meeting the target. A population-based allocation is not feasible as some of our newer cities (e.g., Dublin, Pleasanton, Livermore, Fremont) have relatively large populations and very little old industrial or old urban (pre-1980) development and therefore, very little opportunity for PCB reduction credit through either building demolition (C.12.f) or Green Infrastructure implementation (C.12.c).</p>	<p>comments, we clarified the default Permittee-specific load reduction requirement, based on population, will be used. The wasteload allocations for counties from the PCBs TMDL were based on population so the Permittee-specific allocation are consistent with this approach.</p> <p>Permittees have the option, but not the obligation, to develop an alternative method of distributing the county load reduction requirements to individual cities.</p> <p>The deadline for submittal of this optional scheme has been moved to the 2016 Annual Report.</p> <p>The commenter has criticized the population-based approach. Permittees may propose alternatives for distributing the county load reductions to individual cities.</p>	<p>the county-specific load reduction scheme will be used unless Permittees take the option to develop an alternative</p> <p>Extend due date for submittal of alternate, optional scheme for computing Permittee-specific load reductions.</p>
Berkeley Oakland	7 13	C.12.a	Load reductions not	PCB load reductions are not required by the PCB TMDL. The	We disagree with the commenters' reading of the PCBs TMDL, which	None

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Committer	Comment No.	Provision No.	Key Word(s)	Comment	Response	Proposed MRP Revision
ACCWP	8		required	<p>TMDL Implementation Plan states that PCB reductions should be evaluated after 10 years (i.e., 2020). In 2020, after MRP 2 requirements have been completed, we will have a much better understanding of what can be achieved and through which combination of control measures and will have provided updates to the initial load estimation methodologies. Load reduction targets could then be set at that time.</p>	<p>states that loads from urban runoff to the Bay must be reduced from about 20 kg/yr to 2 kg/yr by 2030. This is the same thing as saying that loads from this source category must be reduced by 18 kg/yr. Therefore, the TMDL does require load reductions.</p> <p>The TMDL implementation plan describes the circumstances and conditions that must be met for the Water Board to consider modifying the TMDL. For example, the Water Board will not be in a position to evaluate how to proceed with modifying TMDL requirements until all feasible control measures are put in place and an estimate of what additional control measures may be necessary to achieve the TMDL is performed. That is why it is crucial for Permittees to implement thoroughly all available control measures during this permit term.</p> <p>The Fact Sheet explains the conditions stated in the TMDL implementation plan regarding possible future TMDL modification, and the permit is consistent with the TMDL implementation plan.</p>	
ACCWP	9	C.12.a	Path to compliance	<p>The permit needs to provide Permittees with a clear and feasible path to achieving</p>	<p>Regarding replacing load reductions with PCB control programs, please see response to Berkeley No. 8/ACCWP</p>	None

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				compliance based on implementation of PCB control programs described in C.12 that can realistically be planned and completed during the permit term. Therefore, the load reduction targets should be removed, especially the 0.5 kg/yr criterion for the second year of the permit, which is unnecessary and burdensome.	No. 7 above. On the topic of the path to compliance, please see the responses to ACCWP Legal #5A and #5B, Brentwood #2 and #6, Belmont #27-28, and the Fact Sheet related to Provision C.12.	
Berkeley ACCWP	9 10	C.12	State reductions as action levels	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 and the risk of potential third party lawsuits. Also, the Permit Fact Sheet should fully describe the default interim accounting method for all of the proposed PCB control measures.	On the topic of action levels, please see the responses to ACCWP Legal #5B and SCURPPP Legal #7B. On the topic of the accounting system in the Fact Sheet, please see the response to Brentwood #5.	None
Berkeley ACCWP	10 11, 12	C.12.b	Accounting system	Provision C.12.b: Revise documentation approach for interim load estimation methodology, if submittal is required allow at least twelve months after the permit adoption,	More time has been allowed for the documentation of the methods to be used for load estimation methodology. The Fact Sheet contains factors associated with estimating load reduction values for foreseeable control	Changed the due date for additional load reduction accounting method

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				<p>especially if documentation of load estimation methodology is required.</p> <p>The Permit notes that the "full description of measurement and estimation methodology" required in this provision is intended as a documented version of the default interim method in the Fact Sheet, applicable to this permit term. In conjunction with the above requested changes in C.12.a, this submittal should be deleted as unnecessary, since a description of a permanent method will be provided before the end of the permit per Provision C.12.b.iii(3). If numeric load reduction targets are retained, the Fact Sheet should document all of the parameters and assumptions involved in this method, which BASMAA representatives provided to Water Board staff in summary form.</p>	<p>measures but does not contain all of the details for how Permittees will use available information to compute load reductions (data sources, assumptions, etc.). The Water Board will review these details early in the permit term before they are used by Permittees in reporting load reductions.</p> <p>It is not appropriate to allow 12 months after adoption because the Water Board needs to see the methods prior to Permittees using the methods to estimate loads for the first annual report.</p> <p>The permit allows Permittees to adjust the accounting system and load reduction calculations for future permit terms, and that deliverable is scheduled for later in the permit term. However, that is a separate matter and does not obviate the need for the information required under C.12.b.iii(1) and (2).</p>	documentation
Berkeley ACCWP	11 13	C.12.f	Building demolition	Permittees are willing to partner with other agencies in this effort but cannot be the leads for implementing necessary upgrades or interpretations to federal and state PCB	Please see the response to Clayton #16.	None

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				<p>regulations. The Draft Permit recognizes that working with state and federal agencies is necessary to create a coordinated program for management of PCB-containing building materials, like those successfully implemented for asbestos or lead-based paint. ACCWP Permittees and other municipalities collaborated with the San Francisco Estuary Partnership's PCBs in Caulk Project, which identified gaps in existing information and regulatory approaches to PCBs in existing buildings. Permittees can encourage proponents of demolition projects to abate PCB containing materials in accordance with existing regulations but cannot pre-empt or anticipate future federal and state regulations.</p>		
Berkeley ACCWP	12 14	C.12	Property referrals	<p>Discussions with Water Board staff indicate that USEPA Region 9 contacts overseeing PCB clean-ups will not commit to timely review or response of proposed abatement plans for projects with PCB-containing building materials, if Permittees were to require documentation of</p>	<p>The permit Fact Sheet clearly explains the manner in which load reduction values can be calculated for referred properties and how some value can be applied at the time of referral if contamination is dealt with that has migrated off-site. None of this is dependent upon the USEPA Region 9 review referenced in the comment.</p>	None

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Berkeley ACCWP	13 15	C.12	Load reductions lack clarity	<p>abatement plan submittal to USEPA prior to issuing demolition permits. Such uncertainty would expose the projects to highly uncertain time and cost impacts.</p> <p>The Fact Sheet lacks clarity regarding the default assumptions used to estimate potential load reductions associated with this provision, which are subject to especially large uncertainties due to lack of published data on release to runoff of PCBs in building materials or from demolition activities. USEPA has not shared results of recent clean-ups or research which would inform updated guidance and best practices, nor made any statements on whether demolition activities will be addressed in its PCB rulemaking process (originally announced in 2010).</p>	<p>There may be a lack of published studies on the exact rate at which PCBs in building materials get into stormwater runoff, but we do know that PCBs do discharge into storm sewers. That is one reason why the PCBs load reduction accounting method provides a significant 2 kg/yr value for the development of a protocol to manage PCBs in building demolition so that they do not discharge into storm sewers and waters of the U.S.</p>	None
ACCWP	15	C.12.f	Building demolition program	<p>Permit language should recognize that a truly comprehensive framework will take longer than 3 years and that Permittees have no control over the participation or action timelines of federal, state or regional agencies.</p>	<p>See the response to Berkeley No. 14.</p>	None

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Contra Costa County	17	C.12	Industrial Properties	<p>Very few "Old Industrial" properties have the potential to discharge PCB-tainted sediment in unincorporated Contra Costa County. Unincorporated Contra Costa County has over 1,000 properties with land use designation, or zoning, for industrial uses between 1945 and 1980 (the period when PCBs were used). After removing those properties that had been capped with impervious surfaces, redeveloped into other uses, or visually assessed and deemed unlikely to potentially discharge sediment, there were less than 20 properties available to sample for PCBs. Consultants took sediment samples from road rights of way adjacent to these properties, which are currently being analyzed by a local lab. But the small number of sites which could potentially produce PCBs entering into the MS4 brings into question the potential benefits of targeting illicit discharge from old industrial properties.</p>	<p>This comment appears to say that a small PCBs load reduction is likely from property referrals. We acknowledge the efforts made to date to identify historic PCB-containing properties and notes that referrals are one of several options currently being considered for PCBs load reduction.</p>	None
Contra Costa County	18	C.12	Load reduction challenge	<p>The County will pursue a three-prong path to achieve Mercury and PCB reductions. 1st, stop PCB-tainted sediment from</p>	<p>Comment noted. We reiterate that the Water Board will take appropriate actions if sites are referred to us. The remedies may include a variety of</p>	None

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				<p>entering the storm drain & local receiving waters, will require substantial assistance from the Water Board. County staff are committed to investigating and using enforcement response plan to require property owners to implement sediment controls to keep PCB-tainted sediment on-site. It will utilize County ordinances to issue fines, if necessary. But municipal fines pale in comparison to administrative civil liabilities issued by the Regional Board. The County anticipates requesting assistance from the Regional Board, and strongly encourages the Regional Board to have adequate staff resources to assist the County and other PCB-challenged communities.</p>	<p>enforcement actions, but staff cannot anticipate the outcome of any particular case since it is the Water Board that decides on a case-by-case basis.</p>	
<p>Contra Costa County</p>	<p>19</p>	<p>C.12</p>	<p>General</p>	<p>The County will also implement enhanced operations to keep County roads free of PCB-tainted sediment. Unfortunately, the majority of roads adjacent to properties that have high potential for PCBs from old industry do not have curb, gutter, or storm drains. This will make enhanced municipal operations, like street sweeping and storm</p>	<p>Comment noted. We concur that this is a good application for green infrastructure.</p>	<p>None</p>

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Contra Costa County	20	C.12	Referrals	<p>drain inlet cleaning, ineffective. The County will prioritize these areas for early implementation of the Green Infrastructure Plan.</p> <p>We suspect that the greatest source of industrial legacy PCBs lies in railroad rights of way and areas associated with electrical utilities. The County intends to sample road rights of way adjacent to many of these land uses. If these areas have PCB-tainted sediment, the County has no authority to implement its Enforcement Response Plan to require the property owner to abate discharge of tainted sediment. Contra Costa County will rely on the authority of the Regional Board to take enforcement action. It was disheartening at the June 8, 2015 hearing to hear testimony from the City of Oakland indicating that two years after referring specific properties to the Regional Board, staff had yet to act in tangible ways. The County and other municipalities will need the Water Board to take action quickly against any property owners against whom the municipality has no authority, in order to</p>	<p>Comment noted. We reiterate that the Water Board will take appropriate actions if sites are referred to us.</p> <p>See also the response to Berkeley #12.</p>	None

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Contra Costa County	21	C.12.f	Building demolitions	<p>achieve the mandated Mercury and PCB reductions in stormwater.</p> <p>Achieving significant PCB reductions during building demolitions during building demolitions will rely on early and sustained opportunities during the next MRP permit term. However, permittees will have no control over timing of when properties redevelop.</p> <p>Furthermore, a program of this nature, with such widespread impacts, should be implemented by the State, in a manner similar to the asbestos abatement program.</p>	<p>On the topic of control over timing of redevelopment, please see the response to Brentwood #2.</p> <p>On the request that the program be implemented by the State, please see the response to SCVURPPP Legal #7G.</p>	None
Contra Costa County	22	C.12.f	Building demolition	<p>Additionally, it is unclear how much benefit will be gained by containing PCB-laden dust during demolition. The County supports developing a state-wide program to abate dust during demolition of potentially PCB laden buildings, but County Watershed Staff are concerned there may not be enough opportunity or accountability to successfully remove significant levels of PCBs to assist in achieving mandated reductions.</p>	<p>The Fact Sheet explains the load reduction value that will be applied for ensuring that these control measures are in place at applicable buildings.</p> <p>Please also see the responses to Belmont #36 and Contra Costa #21.</p>	None
Contra Costa	24	C.11 and	Not feasible	Because of limited opportunities	Please see the responses to ACCWP	None

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		C.12	to comply	to abate sediment from entering local waterways, the limited capabilities to implement a program to abate caulk in demolished buildings, and the extraordinary challenges to plan and implement Green Infrastructure, Contra Costa County believes the numeric PCB and Mercury requirements are not feasible.	Legal #5A and Contra Costa County #17.	
Clayton	3	C.12	Delay PCBs actions	Additional efforts are needed by most all cities to continue to implement the Trash Reduction requirements. These efforts have just commenced and going forward will undoubtedly consume more staff resources and funds. In addition to the ramp-up of the Trash Reduction implementation, two (2) new requirements will push the need for more staffing and funds: Green Infrastructure, and PCB Reduction. The City of Clayton asks for prioritization, as suggested below. There is not an ability to achieve all the proposed requirements in the time frames identified with the lack of new funds or staffing. The Green Infrastructure and PCB plans need to be moved in	We do not agree that there is an option to delay PCBs load reduction actions. The PCBs TMDL requires significant load reductions from urban runoff by the year 2030. The control measures that Permittees need to implement will need to start immediately and be sustained if the wasteload allocations will be achieved	None

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Emeryville	4	C.12	Permittee-specific load reductions	<p>their start and implementation to later time periods so that cities can continue to focus on the Trash Reduction implementation.</p> <p>As currently written, there is no mechanism by which a Permittee can know its "share" of the regional PCB reduction requirement. The numeric load reduction requirements are premature in the face of so many unknowns regarding the quantity of PCBs in the environment and the effectiveness of various BMPs in preventing their discharge into receiving waters. Numeric load reduction targets should be removed in favor of the implementation of BMPs and continued research that will allow more quantification.</p>	<p>Please see the response to ACCWP Legal #4.</p> <p>Regarding the commenter's suggestion that numeric load reduction targets should be removed in favor of implementation of BMPs, please see the response to Berkeley 8/ACCWP 7.</p> <p>The Fact Sheet does describe the load reduction value that will be granted for a variety of control measures so Permittees may estimate in advance the scale of efforts required to achieve the required load reductions.</p>	None
Fremont	1	C.12	Feasibility	<p>The City is concerned about the feasibility of meeting the PCB load reduction performance criteria with best management practices (BMPs) and believes the default allocation scheme is unreasonable. We agree with the detailed comments submitted by the Alameda Countywide Clean Water Program on this provision, but will not repeat them in this letter.</p>	<p>On the topic of meeting load reduction requirements, please see the responses to ACCWP Legal #5A and Contra Costa County #17.</p> <p>We assume that the commenter is referring to the method of allocating load reduction responsibility to individual Permittees. Please see the response to ACCWP Legal #4.</p>	None

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Hayward	1	C.12	Feasibility	The MRP 2.0 does not provide a clear, feasible pathway to attain compliance with load reduction requirements. Specially, no feasible activities or best management practices have been described in MRP 2.0 to show how the City can attain compliance. This leaves the City on uncertain ground regarding how to proceed to plan and implement programs for the near future. With this uncertainty, the MRP 2.0, in its current term, may cause the City to begin programs that will ultimately not lead to achieving compliance with the permit. Overall, the schedule proposed for new and current load reductions is infeasible and should allow more time for development, surveying, allocation, and collaborations to meet those reductions.	On the topic of meeting load reduction requirements, please see the responses to ACCWP Legal #5A and Contra Costa County #17. On the topic of allowing more time, please see the response to Clayton #3.	None
Hayward	12	C.12.a	Feasibility	The requirements have no clear feasible pathway to attain compliance. The requirement for 0.5kg/yr and 3kg/yr reduction should be removed as there is no feasible way the City can achieve those goals. Development and redevelopment within the City is not focused on PCB reduction	On the topic of meeting load reduction requirements, please see the responses to ACCWP Legal #5A and Contra Costa County #17. Permittees may achieve PCBs load reductions in several other ways than by waiting passively for development and redevelopment to occur. Please	None

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				nor to a large extent planned, as the City has no control of when or where private developments occur.	see response to Contra Costa #17.	
Hayward	13	C.12.b	More time	The PCB requirements do not allow a sufficient amount of time to study, quantify or report locations of PCB sites, the City's contribution of PCBs, control measures planned or implemented, and the time to develop assessment methodology much less implement that methodology to assess if control measures are achieving PCB reduction. More time should be allowed to study environmental benefits with possible PCB reducing control methods available to achieve PCB reduction.	The commenter has possibly misunderstood the purpose of C.12.b and the effort required. The Fact Sheet contains the default accounting system by which load reduction value can be obtained for various control measures. There is no need to submit more information about this. C.12.b requires documentation supporting the load reduction accounting scheme described in the Fact Sheet (e.g., support and derivation for the factors listed in the Fact Sheet). It also requires an explanation of exactly how Permittees will use available information to report load reductions according to the accounting scheme. And, the provision requires the yearly reporting of load reductions stemming from control measure implementation. Therefore, we do not see a basis for allowing more time for the fulfillment of the requirements under C.12.b.	None
Moraga	5	C.12	Path to compliance	We ask that the load reduction performance criteria not be the point of compliance, and that Water Board staff work with Permittees to provide a clear and feasible pathway to attain	On the topic of load reduction performance criteria as point of compliance, please see the response to Brentwood #6. On the topic of factors outside the	Added language to the Tentative Order stating that municipalities

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				<p>compliance. Most factors that are key to meeting the load reduction criteria are uncertain and many are not within Permittee control (e.g., extent of properties that will be found, building demolition rates, and redevelopment rates), making compliance uncertain. A major means of achieving reductions is through removal of PCBs during building demolitions. However the Town has no control over timing of when properties redevelop. Given historical trends, little to no redevelopment of commercial properties will likely occur in the permit term and the Town would likely need to rely on GI projects to meet its share of PCB load reductions. Based on field surveys conducted, the Town has identified no high or moderate potential source properties for PCB release to the municipal storm drain system.</p>	<p>commenter's control for demolition and pace of redevelopment, please see the response to Brentwood #2.</p> <p>Regarding the scarcity of load reduction opportunities alleged in comment, please see response to Moraga #8.</p> <p>In response to the issue of having no structures with PCBs, we have added language to the Tentative Order stating that municipalities that provide evidence acceptable to the Executive Officer that no non-single-family-residential property developments pre-date 1980 are exempt from this requirement.</p>	<p>that provide evidence acceptable to the Executive Officer that no non-single-family-residential property developments pre-date 1980 are exempt from this requirement.</p>
Oakland SMCWPPP	14 71	C.12.a	Action Levels	<p>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</p>	<p>On the topic of action levels, please see the responses to ACCWP Legal #5B and SCVURPPP Legal #7B.</p> <p>It is not possible to unambiguously define the "good faith" effort as suggested in the comment.</p>	None

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				<p>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.</p>		
Oakland	15	C.12.b	<p>Need more time Extend Time Frame for Collecting, Documenting and Refining Load Reduction Estimates to April 1, 2017</p>	<p>Permittees will spend 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</p>	<p>Please see the response to Hayward #13.</p>	None

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				<p>addition, Permittees will be coordinating within and between counties on assessment methods and the accuracy of these assessments is critical.</p> <p>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.</p>		
Oakland	19	C.12.b	Streamline reporting		<p>We acknowledge that reporting takes time and is generally open to suggestions for improvement of reporting content, such as the commenter provides. However, at this time, the Water Board's need to gauge the progress of control measure implementation and level of load reduction precludes biennial reporting.</p>	None
Pittsburg	9	C.12.a	Need more guidance	<p>Further guidance needs to be developed for this Provision to be implementable. Accounting and procedures to validate PCB reductions through mitigation measures have not yet been developed. Permittees have no control over the rate of demolition, and further guidance is necessary for effective implementation of the Green Infrastructure. The City respectfully proposes elimination of the numerical interim load reduction schedule, in favor of</p>	<p>In response to this and similar comments, Staff edited the Fact Sheet to clarify the PCBs load reduction accounting method.</p> <p>The commenter refers to the lack of accounting procedures for green infrastructure implementation and the control of PCBs from demolition activities. Please see the response to Brentwood #2.</p> <p>Regarding the interim load reduction requirements, please see the response to Berkeley #8.</p>	<p>Clarified the PCBs load reduction accounting method in Fact Sheet</p>

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				the ultimate and more relevant goal of total reduction by the end of the permit term. This change will measure interim compliance by levels of effort expended rather than a numerical limit.		
Pleasant Hill	10	C.12	No control over compliance	The Tentative Order requires Permittees to achieve reductions in PCBs discharged to City storm drains. For the most part, this is accomplished by removal of PCBs, commonly found in insulating fluids (for transformers and capacitors), and caulking and sealants which are more prevalent in old industrial zones and abated during building demolition. In reality, Permittees have no control over when private property owners demolish these buildings.	There are a number of control measures that may be appropriate to implement. Please see the response to Belmont #27, 28. Permittees are also encouraged to look for the presence of PCBs-containing equipment as part of their industrial inspection program. Regarding the issue of controlling the pace of demolitions, please see also the response to Brentwood #2.	None
U.S.EPA	3	C.12.b	Support accounting framework	Specific to PCBs, we support the Water Board's proposed accounting framework provided in the factsheet. EPA believes the Permittees' experience with implementing BMPs for PCBs during MRP1.0 provides the lessons learned for continued efforts to install PCB control measures in Bay watersheds. This framework is straightforward and will be useful in evaluating	Comment noted. Staff appreciates the support for this provision.	None

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U.S.EPA	4	C.12.f	Support regional building demolition program	compliance within this permit term. Furthermore, Permittees will be able to improve the accounting scheme during MRP 2.0. Regarding PCBs in building materials (caulk), we concur with Water Board's desire to pilot a locally controlled program, which can be developed for region-wide consistency for PCB removal during age-specific building demolition. We recognize this program will require coordination with other Federal and State agencies; however it need not be started as a state-wide program.	Comment noted. We appreciate the support for this provision.	None
U.S.EPA	5	C.12.f	EPA support for building demolition program	EPA Land Division is able to offer the Regional Board technical support in development of guidance documents in preparation for program implementation.	We appreciate this offer of technical support for program implementation. We look forward to partnering with U.S. EPA, local agencies, and Permittees to develop a successful approach to reducing this source of PCBs.	None
U.S.EPA	6	C.12.a	Support flexible approach to implementation	We reinforce the Water Board's approach to allow for flexibility in determining the various control measures to achieve PCBs milestones and recommend this approach be retained in the final permit.	We appreciate this support and have maintained the flexible approach. Please see also the response to ACCWP Legal #5A.	None
U.S.EPA	7	C.12	Support accounting	We also support the proposed accounting framework provided in	Comment noted.	None

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			scheme	the factsheet based on Permittees' success with several PCBs pilot projects during the current permit term, and likelihood of continued Permittee efforts,		
U.S.EPA	8	C.12	Milestones achievable	We support Water Board's staff analysis that these milestones are feasible attainable in the next permit cycle.	Comment noted. The analysis referred to in the comment can be found in the memo: <i>Basis for Required PCBs Load Reductions in MRP 2</i> , February 23, 2015).	None
U.S.EPA	9	C.12.f	Support for program to address PCBs in building materials	We also endorse the Water Board's evolving 'program' to minimize PCBs from entering urban runoff via age-specific building materials and concrete sealants. Given this is new permit provision, we acknowledge the Water Board will need time to develop this program, which includes (at minimum) demolition and retrofit protocols concurrent with inter-agency coordination and discussions with permittees on considerations of PCBs load reduction credits.	Comment noted.	None
ACCWP CCCWP	57 70	C.12	Clarify introductory paragraph	Clarify that per the PCB TMDL the aggregate load and waste load allocation for Permittees are 14.4 kg/yr and 1.6 kg/yr respectively.	We agree.	The introductory paragraph has been edited consistent with the commenter's

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ACCWP	58	C.12.a	Delete numeric limits	Delete Table 12.1 and text references to numerical load reduction targets, especially the 0.5 kg/yr criterion for 2 nd year of the permit. Numerical criteria remaining in this provision should be stated in the form of an action level. State that compliance will be determined based on implementation of control measures (if necessary these should be associated with the action levels per comments below).	On the topic of action levels, please see the responses to ACCWP Legal #5B and SCVURPPP Legal #7B. Regarding the interim load reduction requirements, please see the response to Berkeley #8.	None
ACCWP	63	C.11/12.c, d	Green infrastructure issues	Delete provisions C.11/12.c or at minimum remove Tables 11.1 and 12.2. Otherwise, allow at least an additional 6 months after submittal of Green Infrastructure Plan for Permittees to prepare additional analyses and conduct peer review for the Green Infrastructure aspects of the TMDL implementation plan, and align timeframes for future projections with those required in the plan submittals for C.3.j.	Staff disagrees that deleting GI load reduction requirements is warranted (see response to Belmont #34). The request to align timeframes for future projections (C.12 and C.3 requirements) is reasonable and will be accommodated.	The future projection timeframes required in C.3 and C.12 will be harmonized.
ACCWP	64	C.12.f	Building demolition program	Consider using Water Board and USEPA authority to develop a single required PCB removal permit for applicable demolition or renovation projects analogous	Staff has considered the use of Water Board authorities and determined that Permittees' permitting authority for building construction/demolition is key as the point where controls will be put in	None

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				to the protocols used by the BAAQMD or DTSC for projects involving removal of asbestos or lead-based paint.	place. While the Water Board can contribute to development of the protocol, and USEPA has indicated it will provide some level of assistance, neither entity has direct authority to issue demolition permits for these activities. See also the response to SCVURPPP Legal #7G.	
ACCWP	65	C.12.f	Building demolition program	SFEP's PCBs in Caulk Project recommended that standardized cleanup plans would reduce the uncertainties facing applicants for demolition projects about time and cost required to comply with existing state and federal regulations regarding handling and disposal of PCB wastes. Development of standardized plans would require cooperation of USEPA staff and is not wholly in control of the Permittees. Revise the effective date of implementation to be set at a reasonable interval (e.g. 18-24 months) after USEPA approval of guidelines for standardized clean-up plans for the categories of projects to be affected.	We disagree that USEPA's approval of demolition PCB-containing waste is needed. USEPA has recently updated (Dec. 2012) its postings of such BMPs, which should provide demolition proponents adequate information. The Tentative Order provides three years to vet these BMPs while developing a local control protocol. When and if Permittees and/or the Water Board determine that additional BMPs, or enhancements of existing BMPs are needed, based on problems encountered in implemented a demolition PCBs control program, such work should be done at that time.	None
CCCWP	6, 71	C.12.a	Compliance	CCCWP requests MRP 2.0 base compliance on implementation of PCBs and Hg control programs designed to achieve the load reduction performance criteria	In response to this and similar comments, we edited the Fact Sheet to clarify that the PCBs load reduction accounting method is final.	The Fact Sheet has been revised to include more mercury

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				<p>using an a-priori agreed upon interim accounting method and to restate the load reduction performance criteria as action levels. Compliance assessments would be based upon the Permittees good-faith demonstration of actions and effort consistent with these control programs. This approach is warranted based on the level of uncertainty, recognized by your staff and the Permittees, in the available data, models and assumptions in the accounting methods. CCCWP recommends the inclusion of a statement in MRP 2.0 that acknowledges this, such as "If the PCBs load reduction performance criteria are not achieved, then Permittees shall demonstrate reasonable and demonstrable progress toward achieving the criteria through the implementation of the control programs."</p>	<p>Regarding the suggested approach to require a "good faith demonstration of actions" and "reasonable and demonstrable progress toward achieving criteria ...", see the response to Berkeley #8 and Berkeley #14.</p>	<p>and PCBs load reduction accounting factors.</p>
CCCWP	69	C.11/12	Timelines	<p>With the delay in the release of the Draft Tentative Order from February to May 2015, many of the required submittal and/or completion deadlines have not been appropriately extended, and as currently written would be</p>	<p>In response to this and similar comments, some deadlines for deliverables have been adjusted. See the response for CCCWP #8.</p>	<p>Some reporting dates are extended</p>

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				<p>extremely difficult, if not infeasible, to meet. For example: C.11.a.iii.(1) due February 2016; C.11.a.iii.(2) due with the June 2016 Annual Report; C.12.a.iii.(1) due Feb. 1, 2016; C.12.a.iii.(2) due with the 2016 Annual Report; and, C.12.a.ii.(4) due April 2016. Action desired: Extend the deadlines for these reports to the 2017 Annual Report and work with Permittees to establish more realistic time frames for submittal of reports and/or completion of certain tasks, including the Green Infrastructure Framework in Provision C.3.j.i.(1).</p>		
CCCWP	73	C.12.a	Interim load reductions	<p>The interim PCBs load reduction compliance performance criteria (i.e., 500 g/yr during 1st two yrs) should be omitted. Preliminary calculations of the benefit of reasonable control program scenarios over the first two years of the permit term reveals that meeting the year 1 and year 2 load reduction criteria are not feasible. Additionally, the PCBs load reduction performance criteria in Table 12.1 are unclear. Presumably, the proposed area-</p>	<p>We disagree that eliminating these interim load allocations is warranted and that the load reductions are not feasible. See the response to ACCWP #58. The Commenter does not provide the "preliminary calculations" cited in the comment. The required load reductions are meaningful and achievable (see memo: <i>Basis for Required PCBs Load Reductions in MRP 2</i>, February 23, 2015).</p> <p>Regarding the Fact Sheet, the Commenter has misunderstood material presented in the Fact Sheet as to how</p>	<p>Revised Interim load reductions to meet by June 30, 2018 rather than an average during first two years of permit.</p>

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				<p>wide load reduction performance criteria to be achieved by end of permit term is 3 kg/yr (as opposed to 10 kg/yr if one assumed that 0.5 kg/yr would be required in each of the first two years and 3 kg/yr would be required in each of the subsequent three years). Note that the Fact Sheet states the load reductions should be achieved "each year" (Fact Sheet, page A-98). This should be clarified by stating that 0.5 kg/yr is required at the end of year 2 (preferably this interim performance criterion should be removed) and that 3 kg/yr be achieved by the end of year 5.</p> <p>Action desired: Remove the PCBs load reduction performance criteria for the first two years of the permit term from this provision.</p>	<p>the load reduction requirements add up. As presented in the draft Tentative Order the load reductions of 0.5 kg/yr are required for each of the first two years but assessed as the average of years 1 and 2. Therefore, load reductions totaling 1 kg for the first two years would average to 0.5 kg/yr for each of those years. For years 3-5, Permittees must accomplish load reductions of 3 kg/yr for those years. Again, a total of 9 kg or reduction over those three years would average 3 kg/yr for those years. The commenter has confused total amounts with amounts per year based on the comment. Regardless, to account for the expected permit effective date of January 1, 2016, which is midway through the existing fiscal year, and to simplify the compliance evaluations, we have revised the requirement so the interim load reductions must be met by June 30, 2016 rather than as an average during the first two years of the permit.</p>	
CCCWP	75	C.12.a.iii.	Referrals reporting	<p>Permittees must report on contaminated sites referred to the Regional Water Board during the permit term in the 2016 Annual Report, although this is the first annual report of the permit term. Action desired: Replace "during the permit term" with "during the</p>	<p>We agree that the phrase "this permit term" is unclear. The intent is for Permittees to include a clear, up-to-date listing of all potential PCB-containing sites referred to the Water Board in the 2016 Annual Report.</p>	<p>Clarified that all referral properties identified to date shall be reported.</p>

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				previous year of the permit term" as this information will be updated each year per Provision C.12.a.iii.(3).		
CCCWP	79	Fact Sheet	Fact Sheet edit request	Revise Permit Fact Sheet to reflect the current state of scientific knowledge based on the RMP PCBs Synthesis Report and work to date on PCBs sources and control strategies. Revise the sentence on page A-94 above, or identify the uncertainties associated with achieving the performance criteria.	The suggested revisions to the Fact Sheet are not necessary or warranted, as they go beyond the information needed to support the Tentative Order. We disagree with the commenter's interpretation of the Fact Sheet regarding the feasibility of achieving the load reduction performance criteria. The information submitted in the Integrated Monitoring Report was used in the development of the load reduction accounting scheme presented in the Fact Sheet as well as the estimates for achievable load reductions in the memo: <i>Basis for Required PCBs Load Reductions in MRP 2</i> , February 23, 2015. See also the response to SCVURPPP Legal #7A.	None
CCCWP	81	Fact Sheet	Request edits	The Permit Fact Sheet references many values from the Sources, Pathways, and Loadings Multi-Year Synthesis Report (McKee and Yee, 2015). As this is currently a draft report, the Permit Fact Sheet should be revised to reflect final edits to the report. Action Desired: Revise the Permit Fact Sheet to reflect final edits to the report.	The report (McKee and Yee, 2015) is still in draft form and is the only available version for citation at this time, but the passages cited are strongly supported and unlikely to change as the report is finalized.	None

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SMCWPPP	75	C.12.e	Request more time	SMCWPPP agrees that this potential source of PCBs should be evaluated. However, given the numerous tight schedules during the early part of the permit term, we request an extra year to collaborate with other Bay Area stormwater programs to complete this work. Recommended Solution: Change the reporting due date from the 2017 to the 2018 Annual Report.	We agree.	The due date for reporting on this monitoring is the 2018 Annual Report.
SCVURPPP SCVURPPP SMCWPPP	6, 7 66, 78 2, 6	C.12	Scale back PCBs provision	At the July 8, 2015 hearing, Board members acknowledged that given high costs and difficulties to address PCBs, trash controls should be given priority during the permit term. This is consistent with the State Water Board's message via the recently adopted trash amendments. Based on this direction, PCB requirements should be reduced and the implementation schedule expanded to allow Permittees to focus on trash during this permit term. Regional Board members also noted the general approach in the permit is to require implementation of BMPs, and that requirements should be predictable and provide a	We disagree with the commenter's interpretation of the Water Board's message in regards to PCBs programs. We note that, in the subcommittee report at the beginning of the July hearing, the Board expressed support both for the scale of required PCBs load reductions as well as the required pace of those reductions. See also the response to San Mateo #8. In regard to compliance being based on implementing a PCBs control program, please see Berkeley #8/ACCWP Legal #7.	None

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SMCWPPP	3	C.12	Board member comments on C.12	<p>clear/concise path to compliance.</p> <p>We request the Tentative Order be revised so that: 1) the load reduction criteria are not the point of compliance and compliance 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 additional action and reporting), based on an interim accounting method included in the permit and applicable for at least permit term; and 2) implementation schedules be expanded to allow focus on higher priority water quality controls as deemed by the Regional Board.</p> <p>Regional Water Board members also noted that the general approach in the permit is to require implementation of BMPs and pollutant controls, and that the requirements in the permit should be predictable and provide a clear/concise articulation of the path to compliance. These factors are particularly relevant to crafting the PCBs-related requirements.</p>	<p>The requirements in the Tentative Order are clear. The Fact Sheet has been edited to better describe the ways in which Permittees may demonstrate compliance with the provisions.</p> <p>See also the response to ACCWVP Legal #5A, Brentwood #6, Brentwood #2, Brentwood #5, SCVURPPP Legal #7B and the Fact Sheet discussion for C.12.</p>	None