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July 7, 2015

Bruce Wolfe, Executive Officer
California Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay Street
Oakland, CA 94612
Via email to: mrp.reissuance@waterboards.ca.gov

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

Dear Mr. Wolfe and members of the Board:

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

For the past two years, representatives from Contra Costa municipalities, along with a consortium of Bay Area agencies and Bay Area Stormwater Management Agencies Association ("BASMAA"), have been engaged in an ongoing dialogue with your staff for the issuance of MRP 2.0, so that the requirements contained in MRP 2.0 provide for a clear path to compliance.

Despite the extensive effort made by the above listed agencies, few suggestions were carried forward into the draft Tentative Order. Therefore, the City of Brentwood ("City") opposes the Tentative Order as written; and asks that your Board consider the following comments, and direct Water Board staff to work with Permittees to revise the Tentative Order.

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

The draft Tentative Order includes a new mandate to develop Green Infrastructure Plans. This multi-year plan represents a significant paradigm shift and is impossible to implement due to right-of-way constraints and existing utilities. It will also require significant investment on the part of all Permittees.

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

- Assess each planned infrastructure project and add Green Infrastructure features where feasible;

- Plan and implement a program to manage PCB-containing materials in commercial and industrial structures constructed or remodeled between 1950 and 1980 at the time those structures are demolished;
- Demonstrate trash load reductions of 70% from 2009 levels - up from the current 40% requirement - by installing full trash capture devices or implementing equivalent trash control measures and evaluating their effectiveness through visual surveys;
- Require private property owners in high-trash and moderate-trash areas to install full trash capture devices or implement equivalent measures;
- Requires Pre-2005 approved projects to comply with Low Impact Development Standards ("LIDs"). Once the Tentative Map is approved for these projects, the City does not have legal authority to require a developer to install LIDs in these projects.

These major new and expanded mandates will require a major expense, sustained effort to implement, and no additional capital or ongoing maintenance funding has been identified for this purpose.

Permittees Must Have a Clear Path to Compliance

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

- The draft Tentative Order mandates achieving specified reductions in the total quantity of PCBs discharged from municipal storm drains. A major means of achieving these reductions is through removal of PCBs during building demolitions. However this fails to acknowledge that Permittees have no control over timing of when properties redevelop.

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.

- The Tentative Order includes (in the Fact Sheet) an incomplete method to achieve stipulated reduction credits for each building demolished with PCB controls, for each redeveloped site with new bioretention facilities, and for finding and abating concentrated sources of PCBs. Looking for hidden PCB sources is a good idea, but Permittees can't guarantee that they will find them and be able to abate them.

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.

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- 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 during Permittee annual reporting.

- Water Board staff has stated the threat of noncompliance is intended to strongly encourage Permittees to find and abate hidden PCBs, and that Water Board staff would use "enforcement discretion" if and when Permittees are unable to meet the mandated PCB load reductions. From a municipal government perspective, new financial and staffing commitments must be based on agreed upon goals and objectives, and have well-defined metrics for measuring progress.

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.

The City of Brentwood appreciates the efforts by your staff to develop permit requirements that are implementable and effective in improving surface water quality - a goal which we share. The City looks forward to resolution of the remaining issues and to implementing the updated permit.

Sincerely,


Gustavo "Gus" Vina
City Manager

cc: Bailey Grewal, City of Brentwood, Director of Public Works/City Engineer