



CITY OF NEWARK, CALIFORNIA

37101 Newark Boulevard • Newark, California 94560-3796 • (510) 578-4000 • FAX (510) 578-4306



November 17, 2016

Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 "I" Street, 22nd floor (95814)
PO Box 100
Sacramento, CA 95812-0100

Email: commentletters@waterboards.ca.gov; Ryan.Mallory-Jones@waterboards.ca.gov

RE: SWRCB/OCC File A-2455 (a thru m)
Comments to A-2455 (a thru m) – December 6 Board Item (Own Motion Order)

Dear Ms. Townsend:

We request that you provide this comment letter to the State Board members for their consideration of the draft Own Motion Order noticed for its meeting on December 6, 2016.

The City of Newark, petition A-2455(e), urges the State Board to adopt an Own Motion Order in this action currently pending before the State Board at your meeting on December 6, 2016 so as to assure that the action is taken within the 270 day period provided by state regulations. We appreciate the Board's desire to avoid unnecessary or premature litigation if the 270 day limitation were to expire prior to adoption of an Own Motion Order. The City is supportive of this objective. However, as stated below we object to the open-ended extension of your consideration of our petition that is dependent on resolution on another matter before the Board.

The City is mindful of the need for the State Board to have sufficient time to review the important issues set forth in our Petition and the other petitions for review filed in this matter. This matter was deemed complete by the Board on March 15, 2016, and it would seem that the Board has already had sufficient time to consider the issues raised in our petition over the course of the last eight months. We have been implementing the San Francisco Bay Regional Board Order for almost a year at substantial cost, including those provisions challenged in our petition. In addition, we have grave concerns with the open-ended time frame for your consideration of our petition in the draft Own Motion Order.

The notification and the draft Order provides that the Board believes that it is appropriate to complete review of the Watershed Management Programs (WMPs) under an MS4 permit issued

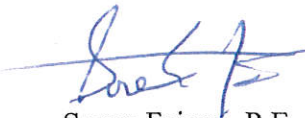
by the Los Angeles Regional Water Board prior to addressing the challenges to the San Francisco Bay MS4 Order. We fail to understand why these issues must be consider sequentially and cannot proceed at the same time as do most other matters before the Board.

The issues raised in our Petition are significantly different from those raised in the Petition for Review in the Los Angeles MS4 permit matter. The issues raised in our Petition include the following: 1) Several Regional Board procedural issues such as Regional Board member recusals, non-disclosure of Regional Board member emails, statement of Board member tentative conclusions prior to receiving public testimony, consideration of last-minute supplemental revisions without sufficient opportunity for public comment, and issues regarding closed session; 2) Visual assessment of trash reduction outcomes; 3) Trash load reduction receiving water monitoring; and 4) Achievement of mercury and PCB load reductions as numeric effluent limitations as opposed to numeric action levels. The review of the Los Angeles WMPs does not involve these issues. The only issue common to the two petition proceedings before the Board is the "deemed in compliance" receiving water and prohibition related issue raised in the San Francisco Baykeeper petition.

In conclusion, we are not opposed to agreeing to a 60-day extension of time to allow for review of our petition to be completed, or to the adoption of an alternative Own Motion Order providing for completion of review within a reasonable and measurable period of time. We believe that the State Board should identify an expedited schedule for addressing our Petition, one which has little or no overlap with resolution of the issues raised in the Los Angeles matter. The Regional Board MRP 2 was adopted almost one year ago, and it is time that the issues presented in our petition are resolved.¹

Thank you for your consideration.

Sincerely,



Soren Fajeau, P.E.
Public Works Director

cc: A-2455 (a thru m) Distribution List via email only

¹ We have also requested in a separate letter that our Petition be placed in abeyance status to prevent having to evaluate an alternative legal course of action in case an Own Motion Order is not timely adopted and/or to provide the State Board with a reasonable amount of time to review the matter in a more appropriately framed Own Motion Order.

A-2455(a thru m) Distribution List

A-2455(a)
City of Alameda **[via email only]**
Elizabeth Warmerdam,
Interim City Manager
Attn: Janet Kern, City Attorney
2263 Santa Clara Avenue
Alameda, CA 94501
jkern@alamedacityattorney.org

A-2455(b)
Antonio Acosta **[via email only]**
City of Union City
34009 Alvarado-Niles Road
Union City, CA 94587
TAcosta@unioncity.org

A-2455(c)
Robert L. Falk **[via email only]**
Legal Counsel
Santa Clara Valley Urban Runoff
Pollution Prevention Program
Morrison & Foerster LLP
425 Market Street, 32nd Floor
San Francisco, CA 94105
RFalk@mofo.com

Matthew Fabry, PE **[via email only]**
Manager
San Mateo Countywide Water
Pollution Prevention Program
City/County Assoc. of Governments
of San Mateo County
555 County Center, 5th Floor
Redwood City, CA 94063
MFabry@smcgov.org

A-2455(d)
City of Albany **[via email only]**
Public Works
Attn: Ray Chan
548 Cleveland Avenue
Albany, CA 94710
rchan@albanyca.org

[via email only]
Wen Chen, PhD, PE, CFM, QSD/P
Senior Engineer
City of Albany Public Works
548 Cleveland Avenue
Albany, CA 94710
wchen@albanyca.org

A-2455(e)
Soren Fajeau, P.E. **[via email only]**
Assistant City Engineer
37101 Newark Blvd
Newark, CA 94560
Soren.fajeau@newark.org

A-2455(f)
Elisa Wilfong **[via email only]**
Water Pollution Control Administrator
City of Hayward
777 B Street
Hayward, CA 94541
Elisa.Wilfong@hayward-ca.gov

Erik Pearson **[via email only]**
Environmental Services Manager
City of Hayward
777 B Street
Hayward, CA 94541
Erik.pearson@hayward-ca.gov

Michael S. Lawson **[via email only]**
City Attorney
City of Hayward
777 B Street
Hayward, CA 94541
Michael.Lawson@hayward-ca.gov

(Continued)

A-2455(g)
City of San Jose **[via email only]**
Leah Goldberg, Sr. Deputy City Attorney
City Attorney's Office
200 E Santa Clara Street
San Jose, CA 95113
Cao.main@sanjoseca.gov

A-2455(h)
City of Dublin **[via email only]**
Andrew Russell
Assistant Public Works Director/City
Engineer
100 Civic Plaza
Dublin, CA 94568
Andrew.Russell@dublin.ca.gov

Sarah Quiter, Esq. **[via email only]**
Meyers Nave
555 12th Street, Suite 1500
Oakland, CA 94607
Squiter@meyersnave.com

A-2455(i)
Dee Williams-Ridley **[via email only]**
Interim City Manager
City of Berkeley
Administrative Division
2180 Milvia Street
Berkeley, CA 94704
DWilliams-Ridley@ci.berkeley.ca.us

A-2455(j)
City of San Leandro **[via email only]**
c/o Debbie Pollart, Director of Public
Works
14200 Chapman Road
San Leandro, CA 94578
dpollart@sanleandro.org

Sarah Quiter, Esq. **[via email only]**
Meyers Nave
555 12th Street, Suite 1500
Oakland, CA 94607
Squiter@meyersnave.com

A-2455(k)
County of Alameda **[via email only]**
c/o Kathy Lee, Esq.
Deputy County Counsel
Office of the County Counsel
1221 Oak Street, Suite 450
Oakland, CA 94612-4296
Kathy.lee@acgov.org

County of Alameda **[via email only]**
Public Works Building
Attn: Sharon Gosselin
399 Elmhurst Street
Hayward, CA 94544
Sharon@acpwa.org

A-2455(l)
San Francisco Baykeeper **[via email only]**
Attn: George Torgun, Managing Attorney
1736 Franklin Street, Suite 800
Oakland, CA 94512
George@baykeeper.org

A-2455(m)
Celso D. Ortiz **[via email only]**
Senior Deputy City Attorney
City of Oakland
One Frank Ogawa Plaza
Oakland, CA 94612
cortiz@oaklandcityattorney.org

Keith Lichten **[via email only]**
Supervising Water Resource Control
Engineer
San Francisco Bay Regional Water
Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612
Keith.Lichten@waterboards.ca.gov

(Continued)

Dale Bowyer **[via email only]**
Senior WRC Engineer
San Francisco Bay Regional Water
Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612
Dale.Bowyer@waterboards.ca.gov

Bruce Wolfe **[via email only]**
Executive Officer
San Francisco Bay Regional Water
Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612
Bruce.Wolfe@waterboards.ca.gov

Ms. Dyan Whyte **[via email only]**
Assistant Executive Officer
San Francisco Bay Regional Water
Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612
Dyan.Whyte@waterboards.ca.gov

Thomas Mumley **[via email only]**
Assistant Executive Officer
San Francisco Bay Regional Water
Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612
Thomas.Mumley@waterboards.ca.gov

Lori T. Okun, Esq. **[via email only]**
Office of Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor [95814]
P.O. Box 100
Sacramento, CA 95812-0100
Lori.Okun@waterboards.ca.gov

Tamarin Austin, Esq. **[via email only]**
Office of Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor [95814]
P.O. Box 100
Sacramento, CA 95812-0100
Tamarin.Austin@waterboards.ca.gov

Marnie Ajello, Esq. **[via email only]**
Office of Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor [95814]
P.O. Box 100
Sacramento, CA 95812-0100
Marnie.Aiello@waterboards.ca.gov

Mr. David W. Smith, Chief **[via email only]**
Permits Office
U.S. EPA, Region 9
75 Hawthorne Street
San Francisco, CA 94105
smith.davidw@epa.gov

Mr. Ken Greenberg, Chief **[via email only]**
Clean Water Act Compliance (NPDES)
U.S. EPA, Region 9
75 Hawthorne Street
San Francisco, CA 94105
greenberg.ken@epa.gov

Gary Grimm, Esq. **[via email only]**
Law Office of Gary J. Grimm
2390 Vine Street
Berkeley, CA 94708
ggrimm@garygrimmlaw.com

Kathy Cote
Environmental Services Manager
39550 Liberty Street
Fremont, CA 94838
KCote@fremont.gov

Ryan Mallory-Jones, Esq. **[via email only]**
Office of Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor [95814]
P.O. Box 100
Sacramento, CA 95812-0100
Ryan.Mallory-Jones@waterboards.ca.gov

Philip Wyels, Esq. **[via email only]**
Office of Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor [95814]
P.O. Box 100
Sacramento, CA 95812-0100
Philip.Wyels@waterboards.ca.gov

