

# C/CAG

## CITY/COUNTY ASSOCIATION OF GOVERNMENTS OF SAN MATEO COUNTY

*Atherton • Belmont • Brisbane • Burlingame • Colma • Daly City • East Palo Alto • Foster City • Half Moon Bay • Hillsborough • Menlo Park  
Millbrae • Pacifica • Portola Valley • Redwood City • San Bruno • San Carlos • San Mateo • San Mateo County • South San Francisco • Woodside*

**2:30 PM, Thursday, August 18, 2016**  
**San Mateo County Transit District Office<sup>1</sup>**  
**1250 San Carlos Avenue, 2<sup>nd</sup> Floor Auditorium**  
**San Carlos, California**

## STORMWATER (NPDES) COMMITTEE AGENDA

- |  |                  |              |
|--|------------------|--------------|
| 1. Public comment on items not on the Agenda (presentations limited to three minutes).   | Breault          | No materials |
| 2. Stormwater Issues from July C/CAG Board meeting: <ul style="list-style-type: none"><li>• None – No C/CAG meeting in July</li></ul>  | Fabry            | No materials |
| 3. ACTION – Review and approve June 16 Stormwater Committee meeting minutes  | Fabry            | Pages 1-6    |
| 4. INFORMATION – Announcements on stormwater issues <ul style="list-style-type: none"><li>• Pervious Paving Specifications – Duly Authorized Rep Approval Needed</li><li>• Proposition 1 Stormwater Grant Proposals</li><li>• C/CAG Stormwater Staff Position</li><li>• Stormwater Funding Opportunities</li><li>• Reminder: Annual Reporting Schedule</li></ul> | Fabry            | Verbal       |
| 5. INFORMATION – Receive presentation on current status and annual reporting for PCBs/mercury load reduction requirements  | Konnan           | Presentation |
| 6. INFORMATION – Receive presentation on current status and annual reporting for trash load reduction requirements   | Sommers          | Presentation |
| 7. ACTION – Review and recommend an approach for developing a pre-demolition building survey standard to reduce loads of PCBs (polychlorinated biphenyls) to municipal storm drains  | Fabry/<br>Konnan | Pages 7-11   |
| 8. ACTION – Provide a recommendation regarding C/CAG support for member agency unfunded mandate test claims on Municipal Regional Permit requirements  | Fabry            | Pages 12-17  |
| 9. Regional Board Report   | Mumley           | No Materials |
| 10. Executive Director's Report  | Wong             | No Materials |
| 11. Member Reports   | All              | No Materials |

---

<sup>1</sup> For public transit access use SamTrans Bus lines 390, 391, 292, KX, PX, RX, or take CalTrain to the San Carlos Station and walk two blocks up San Carlos Avenue. Driving directions: From Route 101 take the Holly Street (west) exit. Two blocks past El Camino Real go left on Walnut. The entrance to the parking lot is at the end of the block on the left, immediately before the ramp that goes under the building. Enter the parking lot by driving between the buildings and making a left into the elevated lot. Follow the signs up to the levels for public parking. Persons with disabilities who require auxiliary aids or services in attending and participating in this meeting should contact Mima Guilles at 650 599-1406, five working days prior to the meeting date.

## **C/CAG AGENDA REPORT**

Date: August 18, 2016

To: Stormwater Committee

From: Matthew Fabry, Program Manager

Subject: Review and approve June 16 Stormwater Committee meeting minutes

(For further information or questions contact Matthew Fabry at 650 599-1419)

---

### **RECOMMENDATION**

Review and approve June 16 Stormwater Committee meeting minutes, as drafted.

### **ATTACHMENTS**

1. Draft June 16, 2016 Minutes

**STORMWATER COMMITTEE**  
**Regular Meeting**  
**Thursday, June 16, 2016**  
**2:30 p.m.**

**DRAFT Meeting Minutes**

The Stormwater Committee met in the SamTrans Offices, 1250 San Carlos Avenue, San Carlos, CA, 2<sup>nd</sup> floor auditorium. Attendance at the meeting is shown on the attached roster. In addition to the Committee members, also in attendance were Sandy Wong (C/CAG Executive Director), Matt Fabry (C/CAG Program Manager), Ray Chan (City of Millbrae), John Fuller (City of Daly City), Pat Ledesma (County Environmental Health), Keegan Black (City of Brisbane), Jon Konnan (EOA, Inc.), Steve Carter (Paradigm Environmental), and Joseah Rosales (Greywater Landscape Design). Chair Breault called the meeting to order at 2:43 p.m.

1. Public comment: None

2. C/CAG staff Fabry provided an update on issues relevant to the Committee from the May and June C/CAG Board meetings:

- May
  - The Board received an update on the Petitions for Review filed with the State Water Resources Control Board (State Water Board) regarding the San Francisco Bay Regional Water Quality Control Board's (Regional Water Board's) reissued Municipal Regional Permit (MRP 2.0).
  - The Board reviewed and approved the appointment of Peykan Abbassi, City Engineer, to represent the City of Half Moon Bay on C/CAG's Congestion Management Technical Advisory Committee and Stormwater Committee.
- June
  - The Board authorized the C/CAG Executive Director to commit matching funds of up to \$109,200 for a Bay Area Stormwater Management Agencies Association (BASMAA) grant proposal to the U.S. EPA's San Francisco Bay Water Quality Improvement Fund for projects addressing PCBs in building materials to help address related requirements in MRP 2.0.
  - The Board authorized the C/CAG Executive Director to pay BASMAA for San Mateo County's outstanding share of regional stormwater projects conducted from FY 2009-10 to FY 2015-16, in an amount not to exceed \$140,961.
  - The Board authorized the C/CAG Chair to execute Amendment Number 2 to the funding agreement with the Bay Area Water Supply and Conservation Agency (BAWSCA), extending the term through June 30, 2017 for an additional cost not to exceed \$25,000 for rain barrel rebates in San Mateo County.
  - The Board authorized the C/CAG Executive Director to execute Task Orders with EOA, Inc., Larry Walker Associates, and S. Groner Associates, Inc., in amounts not to exceed \$1,376,257, \$632,025, and \$325,000, respectively, for technical support services to the Countywide Water Pollution Program for FY 2016-17.

3. ACTION – The draft minutes from the April 21, 2016 Stormwater Committee meeting were approved unanimously (motion: Oskoui, second: Walter).

4. INFORMATION – C/CAG staff Fabry provided announcements on the following stormwater issues:

- Los Angeles Unfunded Mandates Test Claim – the claim went all the way to the California Supreme Court. A decision is anticipated by the end of August. The outcome should influence the results for pending claims from Bay Area Permittees, including San Mateo County, concerning certain provisions in MRP 1.0. The Commission on State Mandates has scheduled tentative hearings on the San Mateo test claims for January 27, 2017.
- Regional Water Board Audit – the San Mateo County Environmental Health Department (CEH) was recently audited by Regional Water Board staff. The audit focused on MRP Provision C.4, Industrial and Commercial Site Controls, and covered inspections conducted by CEH of facilities under County jurisdiction and facilities in other agencies that are inspected by CEH staff under existing agreements. An initial debrief did not seem to reveal any major concerns given that Regional Water Board staff supports the current ongoing transition to electronic records, but the full audit results will not be available for another 6 to 8 weeks.
- C/CAG Lobby Day – C/CAG staffs Fabry and Wong participated and advocated for integration of transportation and stormwater funding.
- Annual Reporting Schedule – Fabry previously emailed out the 2016 BASMAA version of the Annual Report Form along with a schedule for all Annual Reporting activities. Key Annual Reporting dates are:
  - Early to mid-July - 2016 Annual Report preparation guidance package emailed out and posted on SMCWPPP website, including 2016 Annual Report form customized for San Mateo County Permittees.
  - July 18 - SMCWPPP trash Annual Report training.
  - July 19 - SMCWPPP general Annual Report training (all provisions except trash).
  - Sept 2 - Countywide Program Annual Report emailed out for review/comment (comments due two weeks later on Sept 16).
  - Sept 1 - by this date, San Mateo County Permittees to provide their draft Annual Reports to EOA for review. EOA cannot guarantee review of any draft reports received after this date. EOA to provide comments by Sept 16).
  - Sept 30 - Countywide Program and Permittee final Annual Reports to be uploaded to Regional Water Board ftp site by this date.

5. INFORMATION – Fabry and Steve Carter (Paradigm Environmental) provided a presentation on current status and next steps for developing a countywide Stormwater Resource Plan (SRP), including project concepts, as well as a Proposition 1 stormwater grant proposal. SRPs are now required in order to compete for voter-approved bond funds for stormwater or dry weather capture projects. C/CAG is working with Paradigm to develop a countywide SRP on an expedited schedule to enable its member agencies to submit implementation grant proposals for the State Water Board's stormwater grant program, which will be distributing up to \$200 million in Proposition 1 Water Bond funds in two

separate funding rounds. On the longer term, the SRP will also support C/CAG's member agencies in developing their Green Infrastructure (GI) Plans, as mandated by MRP 2.0.

Paradigm is developing project concept documents for local agencies that will provide the basis for Proposition 1 grant applications. Carter provided an overview of project concepts developed to-date for some of the higher priority proposed projects that will be in the SRP, including larger projects in Orange Memorial Park in South San Francisco, Holbrook-Palmer Park in Atherton, and Twin Pines Park in Atherton. Committee member McMinn noted that despite the possibility of immediate Caltrans funding, the Orange Memorial Park project needs further evaluation (e.g., studies on infiltration rates) and therefore if it goes forward it would be implemented in future years. Fabry noted that Caltrans may be interested in funding these types of larger projects in future years that help address mercury and PCBs load reductions. Carter also reviewed a number of concepts for proposed smaller projects (e.g., Green Streets and LID). Carter then reviewed the schedule for applying for Proposition 1 grant funding and completing the countywide SRP. Round 1 grant applications are due the first week of July. The committee discussed approaches to pursue a Proposition 1 grant proposal (e.g., applications from individual agencies vs. a collective application from C/CAG) and challenges related to securing the required 1:1 matching funds.

Finally, Carter reviewed Paradigm's strategy to perform a Reasonable Assurance Analysis (RAA) consistent with requirements in MRP 2.0. The analysis will build off of watershed stormwater capture modeling conducted as part of SRP development to calculate estimated GI project capture volumes. Carter indicated that the watershed modeling will provide the ability to recalculate the San Mateo County wasteload allocation via an improved estimate of sediment loading (which is the basis of the allocation), assessment of the critical period, and incorporation of local mercury and PCBs concentrations. The RAA will identify the quantitative relationship between GI implementation and mercury/PCBs load reductions and will include an optimization step to ensure cost-effective planning. Separate analyses will be performed for each jurisdiction. Much of the RAA work is scheduled to be completed during FY 2016/17. The RAA will be integrated with local agency GI plans during FY 2017/18.

6. INFORMATION – Fabry provided a presentation on future budget projections for the Countywide Water Pollution Prevention Program. C/CAG staff prepared the final FY 2016-17 budget for the Countywide Water Pollution Prevention Program in conjunction with the overall C/CAG Budget, which was adopted by the C/CAG Board at its June meeting. Going into FY 2016-17, the maximum available budget for consultant support on MRP requirements is about \$2.4M. This includes revenue from Measure M, the ongoing NPDES property fee, and carryover from previous fiscal years. In preparing the budget, staff began preliminary assessments of revenues and anticipated costs in future fiscal years. Fabry noted that in future years the budget may be limited to annual revenue minus various ongoing administrative and permit support costs, or approximately \$1.7 million annually. As discussed with the Stormwater Committee in August 2015 and April 2016, potentially beginning in FY 2017/18 C/CAG staff anticipates needing to cut back on services provided by the Countywide Water Pollution Prevention Program to match incoming revenue as any accumulated fund balance will soon be exhausted in meeting new, costlier permit mandates, especially in relation to trash, GI planning, and mercury and PCBs. Fabry presented budget information for FY 2016-17 and preliminary information for FY 2017-18 to begin the conversation with the Committee well in advance of the FY 2017-18 budgeting process on how and where to potentially cut C/CAG services. Fabry noted that the preliminary budgets reflect general front-loading of compliance support costs early in the permit term; however, Committee members noted that there may be additional costs closer to end to the permit term to assist with compliance with

certain provisions (e.g., pollutant load reduction requirements) and there will be permit reissuance costs. Fabry presented a table showing priorities previously assigned by the Committee to several general compliance categories and suggested including presentations on details of C/CAG's support role for the various categories at future meetings.

7. Regional Board Report: NONE.

8. Executive Director's Report: C/CAG Executive Director Wong further reported on C/CAG lobby day. C/CAG staff advocated for integration of transportation and stormwater funding (i.e., they were requesting better integration, not using transportation funds to pay for stormwater needs).

9. Member Reports: NONE.

Chair Breault adjourned the meeting at 4:04 p.m.

DRAFT

2016 Stormwater Committee Roster			Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
Agency	Representative	Position												
Atherton	Gordon Siebert	Public Works Director												
Belmont	Afshin Oskoui	Public Works Director	X	O		X		X						
Brisbane	Randy Breault	Public Works Director/City Engineer		O		X		X						
Burlingame	Syed Murtuza	Public Works Director	X			O		X						
Colma	Brad Donohue	Director of Public Works and Planning		X				X						
Daly City	Patrick Sweetland	Director of Water & Wastewater	O	O		O		O						
East Palo Alto	Kamal Fallaha	City Engineer	O	O		O								
Foster City	Jeff Moneda	Public Works Director	X	X		X		X						
Half Moon Bay	Peykan Abbassi	City Engineer				X		X						
Hillsborough	Paul Willis	Public Works Director	X	X		X		X						
Menlo Park	Justin Murphy	Public Works Director	X	O		X		X						
Millbrae	Peter Vorametsanti	Interim Public Works Director	X					O						
Pacifica	Van Ocampo	Public Works Director/City Engineer		X		X								
Portola Valley	Howard Young	Public Works Director												
Redwood City	Saber Sarwary	Supervising Civil Engineer	X	X				X						
San Bruno	Jimmy Tan	City Engineer	X	X				X						
San Carlos	Jay Walter	Public Works Director	X	X		X		X						
San Mateo	Brad Underwood	Public Works Director	X	O		X		X						
South San Francisco	Brian McMinn	Public Works Director	X	O		X		X						
Woodside	Dong Nguyen	Acting Public Works Director												
San Mateo County	Jim Porter	Public Works Director	O	X		O		X						
Regional Water Quality Control Board	Tom Mumley	Assistant Executive Officer		O		O								

"X" - Committee Member Attended

"O" - Other Jurisdictional Representative Attended

## **C/CAG AGENDA REPORT**

Date: August 18, 2016

To: Stormwater Committee

From: Matthew Fabry, Program Manager

Subject: Review and recommend an approach for developing a pre-demolition building survey standard to reduce loads of PCBs (polychlorinated biphenyls) to municipal storm drains

(For further information or questions contact Matthew Fabry at 650 599-1419)

---

### **RECOMMENDATION**

Review and recommend an approach for developing a pre-demolition building survey standard to reduce loads of PCBs (polychlorinated biphenyls) to municipal storm drains

### **DESIRED FEEDBACK**

The Bay Area Stormwater Management Agencies Association (BASMAA) anticipates developing a “standard” for identification of PCBs-containing materials in buildings. The standard would likely be adopted by municipal ordinance and used during pre-demolition PCBs building surveys. C/CAG staff is seeking feedback from the Stormwater Committee on a BASMAA workgroup’s recommendation to work with the American Society of the International Association for Testing and Materials (ASTM) to develop the standard on a national basis, as opposed to developing the standard locally.

### **BACKGROUND**

Provision C.12.f. of the reissued Municipal Regional Permit (MRP) requires that Permittees develop and implement (or cause to be developed and implemented) an effective protocol for managing materials with PCBs concentrations of 50 ppm or greater in applicable structures at the time such structures undergo demolition, so that PCBs do not enter municipal storm drain systems. This protocol is an important aspect of the overall required PCBs control program since the MRP stipulates that implementation of the protocol would result in a load reduction credit equivalent to two-thirds of the total reduction mandated for this permit term. On behalf of Permittees, BASMAA is currently implementing a project to scope development of regional tools and guidance to assist Permittees with adopting and implementing the protocol. C/CAG and Permittee staffs have provided input on the regional scoping project during BASMAA meetings and through a new project work group that met in June 2016. The workgroup included representatives from various departments within various local agencies (including several representatives from San Mateo County agencies) and the building demolition industry. To-date, Regional Water Board and Environmental Protection Agency (EPA) staffs have not been consulted about the scope of the protocol.



The regional tools and guidance that BASMAA is proposing to develop include the following:

- A “standard” for pre-demolition building surveys to identify PCBs-containing materials in buildings that would be adopted by municipal ordinance.
- A model municipal ordinance that would require applicable project proponents to implement the standard.
- Supplemental permitting materials for demolition projects involving PCBs in building materials.
- The analysis required for the establishment of a fee schedule by Permittees for cost recovery associated with permitting demolition projects involving PCBs in building materials.
- Training and outreach materials for municipal staff and industry stakeholders.

Among the above-proposed tools and guidance, the approach for development of a standard for pre-demolition PCBs building surveys has been the subject of much recent debate among BASMAA and Permittee representatives. The two basic options are to develop the standard locally or through a national process such as through ASTM,<sup>1</sup> which may provide more credibility and certainty for local agencies in mandating a control program on applicable project proponents. One of the primary concerns with pursuing an ASTM standard is whether it could be completed quickly enough to ensure compliance with the MRP requirement for Permittees to implement control programs by July 1, 2019. Pros and cons of developing a standard through ASTM in comparison with a local standard are provided in Attachment 1.

Highlights of BASMAA’s recent communications with ASTM about how the process could work are provided in Attachment 2. C/CAG staff is seeking feedback from the Stormwater Committee on the BASMAA workgroup’s recommendation to work with ASTM to develop the standard on a national basis, as opposed to developing the standard locally.

C/CAG and technical consultant staff will provide a presentation on this issue. In addition, the City of San Carlos has begun implementing efforts to address PCBs in building materials and City staff will be available to describe their current approach and respond to Committee questions.

#### Attachments

1. Pros and cons of ASTM approach to develop a pre-demolition standard procedure for identification of PCBs-containing materials in buildings.
2. Highlights of BASMAA’s recent communications with ASTM.

<sup>1</sup>ASTM International is an international standards organization that develops and publishes voluntary consensus technical standards for a wide range of materials, products, systems, and services. Some 12,575 ASTM voluntary consensus standards operate globally. <http://www.astm.org/>

## August 1, 2016

### Pros and cons of ASTM approach to develop a pre-demolition standard procedure for identification of PCBs-containing materials in buildings

Cons	Comments
<p>Uncertainty regarding whether an ASTM standard could be developed quickly enough given MRP 2.0 requirements to implement a new program starting July 1, 2019. Also, we are depending on implementation of this program to receive credit for 2 kg/year PCBs load reduction of the 3 kg/year reduction required Bay Area - wide by June 30, 2020.</p>	<ul style="list-style-type: none"> <li>• The chair of the appropriate ASTM committee has indicated that developing the standard in two years is feasible. But there is uncertainty and there are no guarantees.</li> <li>• However, if after two years an ASTM standard was not yet adopted it seems likely that at a minimum it could be available in draft form. If BASMAA had in parallel produced other project materials (e.g., model ordinance, supplemental demo permit materials, education and training materials), local agencies could adopt local ordinances at that point (i.e., starting in July 2018) based on the draft ASTM standard and then amend them later when the standard was adopted by ASTM. Or it might be possible to make incorporation of the final standard automatic.</li> <li>• It appears that we could avoid the need to extend the permit deadline via the above. But BASMAA may wish to consider discussing this issue with RWB staff at the outset.</li> </ul>
<p>Permittees might have less control over contents of an ASTM standard compared to a local standard.</p>	<ul style="list-style-type: none"> <li>• Municipal, Stormwater Program, Regional Water Board and EPA staff and others could be on the volunteer Task Group that develops the standard.</li> </ul>
<p>Potentially more costly to develop an ASTM standard compared to a local standard, especially in the short-term.</p>	<p>There is uncertainty about which approach would cost more in the long run. On the short-term, a first draft of a local standard probably would cost less, but by the time BASMAA pays for its peer review and municipalities address questions about a local standard, it could in the long-term cost as much or perhaps more than the ASTM approach.</p>
Pros	Comments
<p>Development via ASTM (an independent national organization that specializes in this type of work) would make the standard more defensible and would likely make it easier for municipalities to adopt associated ordinances.</p>	<p>If a local standard is developed, it may be more challenging for municipalities to adopt ordinances for the new protocol. There could be questions and push back that could be difficult and expensive to overcome from:</p> <ul style="list-style-type: none"> <li>• The constructions industry / developers.</li> <li>• City councils at the time of ordinance adoption.</li> <li>• RWB and/or EPA staff.</li> </ul>
<p>ASTM's expertise in standards development.</p>	<p>BASMAA doesn't have expertise in developing standards and the field of hazardous materials management, making development of a local standard more challenging.</p>
<p>There are indications that EPA (and maybe the RWB) would look favorably upon the ASTM approach.</p>	<p>This national approach would fit with EPA's vision of the program starting in the Bay Area and spreading to other regions. However, as BASMAA has argued, this puts a somewhat unfair burden on Bay Area local agencies, but with the adoption of MRP 2.0 that burden already exists.</p>
<p>Potential partnering opportunities with an ASTM standard.</p>	<p>Other geographic areas may be interested in partnering to develop a national ASTM standard and sharing costs (e.g., WA Department of Ecology and various school districts).</p>

## August 1, 2016

Kelly Moran had telephone discussions and exchanged emails during May 2016 with two ASTM representatives:

- Kate Chalfin, ASTM staffer for E-50 Committee, she is in Pennsylvania, 610-832-9717.
- Jeri Massengill, chair of ASTM E-50 subcommittee responsible for building inspection standards. This subcommittee is called “Inspection for Environmental Assessment” or E-50-02, she is in Minnesota, 952-253-2004. ASTM Committee chairs are volunteers – Jeri is CEO of Historical Information Gatherers (HIG), a firm that provides information for environmental site assessments. She has extensive experience in the property evaluation field and with ASTM.

Highlights from these informal communications include the following:

- This proposed standard would likely go to subcommittee ASTM E50-02, which handles assessment of commercial properties. E50-02 is a subcommittee of the E50 environmental standards committee.
- The ASTM standards development process is driven by volunteers. The people proposing the standard usually spend the most time on the development. The process starts with identifying a technical contact (“sponsor”) who must be a member of ASTM (\$75/year).
- The process is driven by the sponsor. The sponsor provides the momentum to make it happen. The sponsor needs to have excellent communications and management skill sets but does not need to be a technical expert. Selecting a motivated and effective sponsor is essential to success.
- The sponsor should attend the twice a year E-50 in-person meetings to network, educate, and advocate for the proposed standard. The meetings are in April and October. Upcoming meetings are: Orlando - October 25-27 2016; Toronto - April 2017, and New Orleans - October 2017. Only one person (the sponsor) needs to make the trip. The sponsor should also expect to spend about 4 - 6 hours per week (i.e., 10 to 15% of a full-time position) on development of the standard, particularly during the first year because of the educational effort.
- To start the process, the sponsor completes a 3-page form. Kelly has obtained the form and initial guidance on filling it out (she did a quick draft to support her conversation with Jeri M. and received comments back from Jeri indicating that the quick draft is actually close to being ready to submit). However, Kelly is not available to be BASMAA’s sponsor for this standard.
- The next step is to set up a “Task Group.” This is the group that actually drafts the standard. Usually it is entirely comprised of volunteers. They usually divide up the drafting, using ASTM’s standard format. Most work on standards is done virtually by email and phone, with very few in-person meetings. Task groups meet as often as monthly and commonly do so by phone.
- A key role of the sponsor is to perform education within the ASTM and stakeholder community. ASTM staff helps with this by conducting a press release, e-blasts, and facilitating scheduling of workshops at in-person ASTM meetings (which can include external webinar participation). But it’s really the sponsor that gathers the group and builds the team that will bring a standard to consensus.
- It’s very helpful to have agencies like the Regional Water Board and EPA to help with the outreach.
- There are multiple rounds of balloting until a consensus or near consensus is reached. Balloting starts at the subcommittee level and then goes to the full committee for final approval.
- E-50 has good leadership and has been relatively efficient compared to many ASTM committees. Most E-50 standards are getting done within two years. The time depends partly on complexity. For example, a 25-page straightforward standard is much quicker than a 200-page detailed standard.

## **August 1, 2016**

- Standards iterate, so the first version doesn't have to be perfect.
- After being briefed on the general issues related to PCBs in building materials and the related requirements in the Bay Area municipal stormwater permit, the chair of ASTM subcommittee E-50-02 was very interested in and supportive of the idea of developing our proposed standard.

## **C/CAG AGENDA REPORT**

Date: August 18, 2016

To: Stormwater Committee

From: Matthew Fabry, Program Manager

Subject: Provide a recommendation regarding C/CAG support for member agency unfunded mandate test claims on Municipal Regional Permit requirements

(For further information or questions contact Matthew Fabry at 650 599-1419)

---

### **RECOMMENDATION**

Provide a recommendation regarding C/CAG support for member agency unfunded mandate test claims on Municipal Regional Permit requirements.

### **BACKGROUND**

Subsequent to the San Francisco Bay Regional Water Quality Control Board issuing the Municipal Regional Permit (MRP) in 2009, C/CAG collaborated with other Bay Area stormwater programs to develop model documents to support Permittees in filing test claims with the Commission on State Mandates (Commission). Identical test claims were filed by all but one of C/CAG's member agencies, alleging a reimbursable state mandate in regard to the MRP's trash, water quality monitoring, and mercury/PCBs diversion to sanitary sewer requirements. The City of Brisbane, being the first to file a claim in San Mateo County, became the designated Claimant, with all other agencies subsequently designated co-claimants to the Brisbane claim. Similar actions took place in Alameda and Santa Clara Counties. Contra Costa and Solano County permittees chose not to file test claims.

Prior to Bay Area test claims, stormwater permit-related test claims were filed by permittees in Los Angeles and San Diego Counties. These claims were decided by the Commission and subsequently appealed back and forth through the courts by the State and claimants, to the point the Los Angeles test claim is currently under review by the State Supreme Court, with a decision expected this month. C/CAG has collaborated with the Alameda Countywide Program to provide amicus briefs on these cases as they have progressed through the courts under joint representation by the law firm of Meyers Nave. The San Diego appeal is currently on hold pending the Los Angeles decision. The Bay Area test claims have also been on hold at the Commission pending the Los Angeles decision and due to a backload of claims. The Commission recently notified Bay Area claimants (letter attached) that hearings on their claims have been tentatively scheduled in anticipation of the Supreme Court ruling and clearing of its backload, with the San Mateo claims slated for January 27, 2017.

## **DISCUSSION**

There are two primary issues (each with numerous sub-issues) for which feedback is requested of the Stormwater Committee:

1. Should C/CAG continue to support legal representation of the San Mateo test claims?
2. Do San Mateo permittees want to consider filing new test claims on certain provisions in the reissued MRP (MRP 2.0)?

These issues are discussed in greater detail in the following sections.

### Representation on Existing Test Claims

Meyers Nave, at the request of the Alameda Countywide Program, provided a proposal to provide legal representation services for the 2010 San Mateo and Alameda test claims through a decision by the Commission, for a cost not-to-exceed \$70,000. Should C/CAG partner with the Alameda Countywide Program, it is anticipated that legal costs (which would likely be further negotiated) would be split evenly between the two programs.

C/CAG staff also asked C/CAG's legal counsel whether County Counsel could provide representation services for the San Mateo test claims, and expects to receive a response soon. C/CAG staff assumes these services would be above and beyond County Counsel's normal legal support services and there would be additional costs to C/CAG for this work.

C/CAG staff did not budget specific funds for this effort in the 2016-17 budget, although \$40,000 was earmarked for the MRP 2.0 petition process (reminder, the Countywide Program signed on to the Santa Clara Valley Urban Runoff Pollution Prevention Program petition on behalf of C/CAG's member agencies) and general contingency. If the MRP 2.0 petition process does not move forward this fiscal year (currently under review by the State Water Resources Control Board), those funds could be used for this effort. Contingency funds are also available, although some or all of these funds may be required to address increased costs for regional projects by the Bay Area Stormwater Management Agencies Association (BASMAA) addressing MRP 2.0 requirements.

### Filing New Test Claims

In the same Meyers Nave proposal mentioned above, a cost estimate was provided for supporting San Mateo and Alameda permittees in filing new test claims related to MRP 2.0 requirements. This cost was proposed at \$275,000. County Counsel is also reviewing whether it has the capacity to support C/CAG in this effort.

C/CAG staff understands new test claims must be filed within one year of the effective date of the new requirement. The revised MRP was adopted on November 19, 2015 and effective as of January 1, 2016. There is also a Commission provision that claims must be filed within one year after the first fiscal year in which new costs were incurred. This provision could allow new claims to be filed as late as June 30, 2017 (one year after the 2015-16 fiscal year). Determining the appropriate date by which claims must be filed will likely require consultation with

Commission staff – regardless of which date is determined appropriate, there is not a great deal of time to develop and submit new claims.

A decision on whether to file new claims is also influenced by the outcome of the California Supreme Court decision on the Los Angeles test claim. If the court rules in favor of the State, it may make filing new claims pointless. To further complicate matters, the Los Angeles test claim was singularly focused on a requirement to install trash receptacles at bus stops and may therefore not be completely applicable to San Mateo claims. The San Diego test claim is much broader and potentially more applicable, but a decision on that case is likely not forthcoming for some time after the Supreme Court's decision.

#### **PRELIMINARY STAFF RECOMMENDATION**

Regarding the existing 2010 test claims, staff recommends C/CAG continue providing legal representation support for its member agencies. Staff anticipates it will be more cost effective to split costs with Alameda permittees, but recommends evaluating whether County Counsel can cost-effectively support C/CAG on this issue. Staff also recommends working with the Alameda Countywide Program staff and C/CAG legal counsel to further refine the scope of work and budget for Meyers Nave to perform these services, including reaching out to Commission staff to see whether the San Mateo and Alameda hearings can be consolidated. Staff will need to further evaluate whether costs for this effort can be covered with the existing 2016-17 budget or whether a budget change would need to be requested of the C/CAG Board. Should the Committee concur with these preliminary recommendations, staff would bring an item for C/CAG Board approval (e.g., a funding agreement with the Alameda Countywide Program or County Counsel to provide support services) in September or October.

Given the significant complexities and uncertainties surrounding the issue of filing new claims (e.g., what is the impact of the Supreme Court decision on the Los Angeles test claim, what MRP 2.0 requirements would be considered unfunded mandates, what filing date is most appropriate, what is the full cost of developing test claims, which agencies are interested in filing, what are the costs of the new MRP 2.0 requirements, does C/CAG have sufficient budget to support filing and to the detriment of what, etc.), staff recommends waiting for the Supreme Court decision to further weigh options. Staff recommends revisiting this issue at a future Stormwater Committee meeting, but also wants to emphasize to the Committee that time is of the essence if timely filing of new test claims is to be achieved.

#### **Attachments**

1. June 15, 2016 letter from Commission on State Mandates



June 15, 2016

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

Thomas Howard  
Executive Director  
State Water Resources  
Control Board  
P.O. Box 2815  
Sacramento, CA 95812-0100

*And Parties, Interested Parties, and Interested Persons (See Mailing List)*

Re: **Request for Additional Information**

*Municipal Regional Stormwater Permit – County of San Mateo, 10-TC-01*  
California Regional Water Quality Control Board, San Francisco Bay Region,  
Order No. R2-2009-0074  
City of Brisbane, Claimant

*Municipal Regional Stormwater Permit – County of Alameda, 10-TC-02*  
California Regional Water Quality Control Board, San Francisco Bay Region,  
Order No. R2-2009-0074  
City of Alameda, Claimant

*Municipal Regional Stormwater Permit – County of Santa Clara, 10-TC-03*  
California Regional Water Quality Control Board, San Francisco Bay Region,  
Order No. R2-2009-0074  
County of Santa Clara, Claimant

*Municipal Regional Stormwater Permit – Municipal Operations (C.2), 10-TC-05*  
California Regional Water Quality Control Board, San Francisco Bay Region,  
Order No. R2-2009-0074  
City of San Jose, Claimant

Dear Mr. Wolfe and Mr. Howard

This letter is a request that the San Francisco Bay Regional Water Quality Control Board and the State Water Resources Control Board supplement the record of the above-captioned Test Claim by filing with the Commission on State Mandates (Commission) copies of:

- a) The official administrative record of the California State Water Quality Control Board, San Francisco Bay Region permit order no. R2-2009-0074, National Pollutant Discharge Elimination System (NPDES) no. CAS612008, prepared in accordance with Code of Federal Regulations, Title 40, Section 124.18; and
- b) The official administrative record of the California State Water Resources Control Board permit order no. R2-2009-0074 (NPDES no. CAS612008), prepared in accordance with Code of Federal Regulations, Title 40, Section 124.18.

Please provide these documents as soon as possible but not later than **Friday, July 15, 2016**.

J:\MANDATES\2010\TC\10-tc-01 Municipal Regional Stormwater Permit - County of San Mateo\Correspondence\RequestforInfo 061516.docx



Mr. Wolfe and Mr. Howard

June 15, 2016

Page 2

In addition, please note that the above-captioned claims have been tentatively set for hearing as follows: *Municipal Regional Stormwater Permit – County of San Mateo*, 10-TC-01, is tentatively set for hearing on January 27, 2017; *Municipal Regional Stormwater Permit – County of Alameda*, 10-TC-02, is tentatively set for hearing on May 19, 2017; *Municipal Regional Stormwater Permit – County of Santa Clara*, 10-TC-03, is tentatively set for hearing on September 22, 2017; and *Municipal Regional Stormwater Permit – Municipal Operations (C.2)*, 10-TC-05, is tentatively set for hearing on January 26, 2018.

Please also note that upon the California Supreme Court's release of its opinion in *Department of Finance v. Commission on State Mandates* (County of Los Angeles), expected no later than August 31, 2016, the Commission will issue a request for additional briefing regarding how that decision should apply to the above-entitled test claims, and will provide a 30-day comment period for all parties, interested parties, and interested persons for that purpose.

As you are aware, Government Code section 17553 requires that the Commission adopt procedures to ensure a statewide cost estimate is adopted within 12 months after receipt of a test claim, which may be extended for up to six months. In the case of the above-entitled test claims, test claim decisions were delayed first due to a historic test claim backlog<sup>1</sup> and then these matters were placed on inactive status based on pending litigation on other stormwater test claims with the same threshold issues. In the interim, Commission staff has eliminated its test claim backlog.<sup>2</sup> If the California Supreme Court determines that in some instances local agency stormwater permits may impose a reimbursable state mandate, then the 13 pending stormwater claims will become active and the Commission will once again have a test claim backlog. Commission staff will work diligently to adopt test claim decisions on these matters as soon as is possible, and will expedite the resolution of these pending matters.

The Commission's regulations require that written materials filed with the Commission be simultaneously served on all parties, interested parties, and interested persons on the mailing list, and accompanied by a proof of service. (Cal. Code Regs., tit. 2, 1181.3) However, this requirement may be satisfied by electronically filing your documents via the Commission's e-filing system. Please see [http://www.csm.ca.gov/dropbox\\_procedures.php](http://www.csm.ca.gov/dropbox_procedures.php) on the Commission's website. The written material will be posted on the Commission's website and the mailing list will be notified by electronic mail of the posting. This procedure will satisfy all the service requirements pursuant to section 1181.3 of the Commission's regulations.

---

<sup>1</sup> This backlog resulted in it taking an average of approximately five years to adopt a statewide cost estimate from the time of filing a test claim during the time period from about 2003 to 2013 and the reasons for this backlog are discussed at length in the Commission's annual Report to Finance and Backlog Reduction Plan, which may be found on the Commission's website.

<sup>2</sup> For test claims filed since 2013, excluding the stormwater claims, the Commission has been adopting test claims within an average of 13 months and statewide cost estimates within an average of 21 months from the time of the test claim filing.

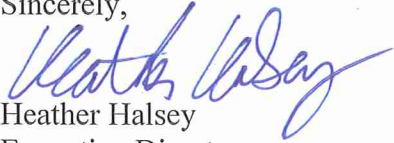
Mr. Wolfe and Mr. Howard

June 15, 2016

Page 3

Because these records are particularly large, please contact Commission Program Analyst Jill Magee at (916) 323-3562 if you need assistance filing these records electronically.

Sincerely,



Heather Halsey  
Executive Director