



DATE: January 11, 2021

TO: Council Sustainability Committee

FROM: Director of Public Works

SUBJECT: Municipal Regional Permit 3.0 Draft and Reissuance Schedule: Review and Provide Direction to Staff

RECOMMENDATION

That the Council Sustainability Committee (CSC) reviews this informational report and provides direction to staff on key elements of the MRP 3.0.

SUMMARY

This report provides a summary of the pending revision and third permit cycle for the Municipal Regional Permit MRP 3.0, which is expected to be adopted in the spring of 2021 by the San Francisco Bay Regional Water Quality Control Board (Water Board). The MRP 3.0 contains stormwater regulatory requirements related to stormwater pollution prevention control measures for both public and private properties and activities including municipal operations, development, inspections, response to illicit discharges, education and outreach, water quality monitoring, and specific controls for pollutants of concern identified by the Water Board. Staff requests that the Committee review and discuss this informational report.

BACKGROUND

The National Pollution Discharge Elimination System (NPDES) program was established in 1972 by the Federal Clean Water Act (CWA). The NPDES program was amended in 1986 to regulate stormwater runoff and established a permitting structure for municipal discharge to the waters of the state. From 1990 to 2009 each municipality in the Bay Area was regulated under countywide stormwater permits with individual requirements specific to each county. On October 14, 2009 the first regional stormwater permit, the Municipal Regional Permit (MRP), was adopted by the Water Board. The MRP regulated municipalities within the counties of Alameda, Contra Costa, Santa Clara, San Mateo as well as the cities of Fairfield, Suisun, and Vallejo and the Vallejo Sanitation and Flood Control District. Municipalities and local agencies included in the MRP are referred to as 'Permittees'.

The first MRP adopted on October 14, 2009, was adopted as a five-year permit, and administratively extended through December 2015. The permit was revised and MRP 2.0 was

adopted on November 19, 2015 and became effective on January 1, 2016. MRP 2.0 will expire on June 30, 2021. The Water Quality Control staff and the Bay Area Stormwater Management Agencies Association (BASMAA), a consortium of all Bay Area Stormwater programs, have conducted meetings since October 2019 to discuss the next permit (commonly called MRP 3.0) and the implications of any proposed changes.

Staff's last report to the CSC on the MRP was on March 9, 2020¹. Staff provided a summary of proposed changes to the MRP 2.0 at that time and the CSC requested to be kept abreast of the permit renewal process.

DISCUSSION

The MRP 3.0 Administrative draft is expected to be issued for comment in mid-January 2021. A 60- day comment period will follow the issued draft prior to adoption.

The MRP 3.0, as with the first and second MRP, will include provisions prescribing best management practices (BMPs) that each municipality must implement to comply with stormwater pollution prevention requirements. The MRP 3.0 provisions are listed below:

- C.1. Prohibitions and Limitations
- C.2. Municipal Operations
- C.3. New Development and Redevelopment
- C.4. Industrial and Commercial Site Controls
- C.5. Illicit Discharge Detection and Elimination
- C.6. Construction Site Control
- C.7. Public Information and Outreach
- C.8. Water Quality Monitoring
- C.9. Pesticides Toxicity Control
- C.10. Trash Load Reduction
- C.11. Mercury Controls
- C.12. Polychlorinated Biphenyls (PCBs) Controls
- C.13. Copper Controls
- C.14. Bacteria Controls (applicable to the City of Pacifica and San Mateo County only)
- C.15. Exempted and Conditionally Exempted Discharges

The MRP also requires annual reporting on all stormwater management and control measures and all Permittees are subject to audits at any time by the Water Board during which all current implementation programs and efforts can be assessed to determine a Permittee's compliance status.

At this time, BASMAA and Water Board staff are discussing the proposed changes to the MRP as Water Board staff is working on a draft permit. In order of Provision, the following draft changes are being considered:

¹ <https://hayward.legistar.com/LegislationDetail.aspx?ID=4389834&GUID=A501EE9D-F3FE-4772-A8EF-4E2948A77F36&Options=&Search=>

C.1: No significant changes are proposed in Provision C.1.

C.2: Minor changes are proposed for Provision C.2 including relocating the requirement to stencil storm drains with stormwater pollution prevention messages from Provision C.7 to C.2, training during the permit term for pollution prevention BMPs and other topics regarding public maintenance activities, and submittal of a corporation yard stormwater pollution prevention plan.

C.3: Water Board staff are strongly considering lowering the threshold of regulated projects (development projects required for above ground stormwater treatment) from 10,000 square feet to 5,000 square feet to make stormwater treatment requirements apply to large single-family homes and other applicable properties. Water Board staff also strongly considering removing the single-family home exemptions for stormwater treatment. Many revisions are being reviewed for all Permittee's Green Infrastructure (GI) Plans as well as requiring additional metrics to show compliance with GI requirements.

C.4: No significant changes are proposed in Provision C.4.

C.5: No significant changes are proposed in Provision C.5.

C.6: No significant changes are proposed in Provision C.6.

C.7: No significant changes are proposed in Provision C.7 except Water Board staff may give Permittees more latitude for public outreach campaigns.

C.8: The Bay Area Stormwater Management Agencies Association (BASMAA) conducts creek monitoring on behalf of all the stormwater countywide programs in the Bay Area, by sampling a subset of creeks in the San Francisco Bay Area for pollution. The sampling cost is shared by the members of BASMAA including the Alameda Countywide Clean Water Program, of which the City of Hayward is a member. These creek monitoring requirements have been in place since 2009 and are viewed as a redundant effort with other monitoring efforts by stormwater programs in the Bay Area. The Water Board is proposing to remove the creek status monitoring requirement after requiring a comprehensive report that summarizes the monitoring work conducted to date. Instead, the Water Board is proposing to increase the fee BASMAA pays to the San Francisco Estuary Institute's (SFEI) Regional Monitoring Program to cover some cost of Contaminants of Emerging Concern studies. This program would partially replace the current creek status monitoring. However, the increased fee to SFEI would not exceed previous monitoring fees paid by BASMAA or other stormwater programs. Also, Water Board staff will most likely require countywide stormwater programs to conduct special studies to replace creek status monitoring, the cost of which will not exceed previously budgeted costs for monitoring.

C.9: No significant changes are proposed in Provision C.9.

C.10: Currently, the mandate for trash reduction is 100% removal of trash from Permittee's stormwater system by the year 2022. The Water Board is proposing to modify the current mandate and require a 90% compliance milestone for trash reduction for Permittees by July 1, 2023 and a 100% compliance milestone is proposed for July 1, 2025. Percent reduction for existing source control (product bans) will continue to be allowed to count towards the 90% compliance milestone until July 1, 2023. New Source control reductions will be allowed towards the 100% milestone until July 1, 2025.

Permittees will be required to submit a trash load reduction plan by March 31, 2024. Additional creek and shoreline cleanups and direct discharge programs will be allowed for trash credit until July 1, 2025. The Water Board will require a new updated trash map regarding private land drainage areas (private properties where stormwater drains to the City's stormwater system, bypassing the street and storm drain inlets along the street) in the 2023 and 2025 annual reports.

Those Permittees who will not meet the 90% compliance milestone by July 1, 2023 will be required to submit a report explaining how they will meet the 100% milestone by July 1, 2025. Hayward currently has 62% removal of trash and already submitted a plan to the Water Board for compliance with the current MRP trash mandate and staff is implementing the actions submitted in the plan. Staff plans to meet the compliance mandate and will keep the CSC informed of the City's progress. Hayward did have a 79% reduction rate in 2017 but trash pick-up efforts by volunteers and City staff were unable to consistently keep streets clean as observed during trash assessments.

In addition, Water Board staff are discussing new requirements for unhoused individuals' encampments and trash abatement in relation to the proximity of waterways. Water Board staff have drafted new requirements such as mapping of the encampments and a plan to address trash abatement and clean up. It is unknown at this time if and when these requirements would be a part of the MRP 3.0.

C.11/C.12: The Water Board is proposing to remove the waste load allocation number for mercury and Polychlorinated Biphenols (PCBs). Water Board staff may review the effectiveness of the PCB requirements in the building demolition program and are also considering more requirements for bridge work as PCBs have been found in some bridges as well as enhanced operation and maintenance in some industrial properties. Full trash capture can be used as one control measure to meet this requirement. In past years, Permittees were required to host a mercury take-back program where residents could turn in their old mercury switches and other mercury containing devices to the City for disposal. Water Board staff have discussed possibly reinstating the requirement to collect mercury containing devices from MRP 1.0.

C.13: No significant changes are proposed in Provision C.13.

C.14: Only applies to San Mateo Unincorporated County and City of Pacifica.

C.15: Water Board staff is proposing more reporting requirements regarding cleanup procedures and regional coordination for emergency firefighting activities.

Discharges from Unhoused Individuals Encampments and Persons Living in Vehicles – Water Board staff are proposing new requirements regarding homeless encampments and the trash and pollution associated with homelessness. Water Board staff has not yet determined if these requirements would be incorporated into Provision C.14 or potentially Provision C.5 or a new provision altogether.

The MRP 3.0 draft provisions that have the most significant impact to the City are C.3 (specifically the GI requirements) and C.10 (trash reduction requirements). The current and proposed GI requirements require retrofit projects, including street improvements and bioswales, that are costly and time-consuming. The trash reduction requirements are also costly and time-consuming as they require installation of expensive trash capture devices and engineering resources. Hayward is currently at 62% trash reduction. Planned trash capture installation projects will increase the City's percentage in the next two to three years. Many Permittees are experimenting with on-land pick up methods, combating illegal dumping, and inspection tactics to increase enforcement against property owners who do not take responsibility for trash generated on their property, to reach the 100% reduction goal. These methods require a trash assessment verification to prove credit for trash reduction and require additional resources, both staff and equipment, to complete. To meet the 100% reduction goal, staff intends to increase stormwater inspections and enforcement, which will include asking businesses to clean up their properties and take an active role in managing trash from their establishments. City staff will review each business as appropriate prior to enforcement as current COVID conditions are a factor in the businesses' ability to comply with stormwater regulations.

ECONOMIC IMPACT

Compliance with the MRP may result in costs to some Hayward businesses as regulation of pollutants of concern result in increased monitoring and disposal fees. Enhanced regulations speculated in the MRP 3.0 may include an increase in stormwater inspections with a strong emphasis on trash, PCBs, and mercury controls, which may impact local businesses. The development community will share in any proposed green infrastructure requirements as well as the planned implementation of the City's adopted Green Infrastructure Plan.

FISCAL IMPACT

The fiscal impacts of implementing the MRP 3.0 are unknown including the staff resources it will require to implement the new requirements described above. Funding for MRP-related activities is currently provided from the City's stormwater enterprise fund, which is funded by property tax revenue which have remained at a fixed per parcel rate since the 1990s. However, expenditures have been and are expected to increase every year. Staff is challenged with finding innovative tools and other resources to comply with the MRP but will continue to participate in the Alameda Countywide Clean Water Program's committees and receive regional support from these efforts.

STRATEGIC ROADMAP

This agenda item supports the Strategic Priority of Improve Infrastructure. Specifically, this item relates to the implementation of the following project(s):

Project 17: Meet regulatory requirements for zero trash in stormwater by installing trash capture devices

SUSTAINABILITY FEATURES

Preventing pollution from entering the storm drain system will benefit Hayward's aquatic ecosystems and the health of the San Francisco Bay. The requirements to eliminate trash from the storm drain system (Provision C.10) is a priority project (Infrastructure project 17) in the Citywide Strategic Roadmap adopted by Council on January 28, 2020.

PUBLIC CONTACT

No public contact has been made regarding this agenda item. The Water Board will host hearings in 2021 and City staff will participate in those proceedings.

NEXT STEPS

Water Board staff have indicated that the effective date of MRP 3.0 is likely to be July 1, 2022. An administrative draft is expected to be released in mid-January 2021, followed by a 60-day comment period. After receiving direction from the Committee, staff will relay comments to the Water Board through BASMAA and continue to update the Committee with future developments regarding the draft MRP 3.0.

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