



DATE: March 9, 2020

TO: Council Sustainability Committee

FROM: Director of Public Works

SUBJECT: Renewal of the Municipal Regional Stormwater Permit: Review Stormwater Permit and Provide Direction to Staff

RECOMMENDATION

That the Council Sustainability Committee reviews this report and provides direction to staff.

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. 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.

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 MRP, was adopted by the San Francisco Bay Regional Water Quality Control 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, was adopted on October 14, 2009 as a five-year permit and administratively extended through December of 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 San Francisco Regional 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.

DISCUSSION

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 3.0 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 3.0 and are working on a draft permit. The most significant and most controversial provision is C.10, Trash Load Reduction. Preliminary discussions amongst BASMAA and Water Board staff have included:

- Terminology change for trash reduction compliance from "100% reduction" to something more consistent with the Statewide Trash Amendments involving full capture of trash from municipal storm drain systems. This would provide a defined road to compliance using trash capture and other methods of trash reduction;
- Continuous opportunity to revise/improve a Permittee's baseline map based on new information. For example, if an area has been redeveloped and has no contribution to trash generation, it can be eliminated from the municipalities overall area where trash reduction has to be implemented;
- Remove Caltrans right of ways that are currently included on Permittee maps;

- Allow for partial trash capture credit when Permittees use trash booms, sea curtains, trash racks and similar capture systems;
- Include a consistent methodology and frequency for visual assessments;
- Retain the existing source control credits (such as plastic bag and polystyrene bans);
- Remove trash monitoring from C.10 and move it to Provision C.8 (Water Quality Monitoring), where the countywide clean water programs can assume a cost sharing;
- Expand credits for creek and shoreline cleanups.

The majority of the Permittees were able to reach the required 80% reduction during MRP 2.0; however, the majority of Permittees are struggling to reach the mandated 100% reduction by the year 2022. Hayward is currently at 69% trash reduction. Future trash capture installation projects will increase the City's percentage in the next 2-3 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 staff and equipment resources 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.

Other provisions in the MRP 3.0 that might increase requirements for permittees are controls for polychlorinated bisphenols (PCBs), mercury, and greener infrastructure development. Requirements may include more stormwater treatment during development, monitoring, and control of PCBs during development and demolition.

ECONOMIC IMPACT

Compliance with the MRP 3.0 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. 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 Haywards 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. Water Board Staff will be hosting hearings with the Water Board in the future 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, 2021. An administrative draft is expected to be released in mid-2020, followed by a formal draft Tentative Order in late 2020. After receiving direction from the Committee, staff will relay comments to BASMAA and continue to update the Committee with future developments regarding the draft MRP 3.0.

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Recommended by: Alex Ameri, Director of Public Works

Approved by:



Kelly McAdoo, City Manager