



DATE: April 11, 2023

TO: City Council

FROM: Director of Public Works

SUBJECT Introduction of Stormwater Ordinance Amendments Related to Municipal Regional (Stormwater) Permit-MRP 3.0 and Finding the Action is Exempt from CEQA Review

RECOMMENDATION

That Council adopts a resolution (Attachment II) and introduces the ordinance (Attachment III) to amend the Stormwater Management and Urban Runoff Control ordinance (Chapter 11, Article 5 of the Municipal Code).

SUMMARY

This report presents proposed changes to the stormwater ordinance in response to the Municipal Regional Permit (MRP 3.0) requirements regarding trash reduction. The requirements adopted by the San Francisco Bay Regional Water Quality Control Board (Water Board) on July 1, 2022, require a 100% trash reduction in the City's stormwater system by July 1, 2025. The proposed ordinance changes include new language requiring property owners with documented trash violations to install full trash capture systems to prevent trash and other pollutants from entering the City's storm sewer system. On March 13, 2023, the draft ordinance was considered and unanimously recommended for approval by the Council Sustainability Committee (CSC).

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 (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 was to expire on June 30, 2021, but was extended through July 1, 2022. The Water Board adopted the new permit known as MRP 3.0¹ on May 11, 2022, and it became effective July 1, 2022.

On January 10, 2022², staff presented to the CSC a summary of the trash reduction requirements in the MRP 2.0 and the proposed MRP 3.0 to regulate properties for trash violations. The requirements address those properties that discharge stormwater directly to the City's storm drain system and staff provided a recommended approach to address the requirements in the City's Stormwater Management and Urban Runoff Control ordinance³ (Chapter 11, Article 5 of the Municipal Code). Trash reduction requirements in the MRP 2.0 required Permittees to be responsible for private properties larger than 10,000 square feet that contribute to trash pollution to the storm drain system. If those private properties have private storm drains that bypass the City's storm drain inlets (meaning the City cannot treat their stormwater downstream) then the City must require the private property owners to control their trash or install their own full trash capture systems. As reported to the CSC on January 10, 2022, staff was mapping the private properties subject to the trash reduction requirements and had estimated that more than 850 parcels were potentially subject to the regulation. The new MRP 3.0 modified the requirement by removing the 10,000 square-foot minimum area. Staff predicts the number of properties requiring enforcement oversight for trash reduction will double.

On March 14, 2022⁴, staff presented to the CSC an overview of the proposed changes in the then draft MRP. The amended regulatory requirements pertain to stormwater pollution prevention for both public and private properties and addresses municipal operations, new development, inspections, response to illicit discharges, education and outreach, water quality monitoring, and specific controls for pollutants of concern identified by the Water Board. There were no significant changes from the March draft to the final version that was adopted on May 11, 2022.

On March 13, 2023⁵, staff presented to the CSC an overview of proposed amendments to the stormwater ordinance (Chapter 11, Article 5 of the Municipal Code) to address the MRP 3.0 requirements for trash reduction and the mandate to control trash from private properties, particularly the requirement to control trash from identified private properties that bypass the City's storm drain inlets. The amendments include defining full trash capture and language to provide enforcement tools to achieve trash reduction on private

¹ https://www.waterboards.ca.gov/sanfranciscobay/board_decisions/adopted_orders/2022/R2-2022-0018.pdf

² <https://hayward.legistar.com/LegislationDetail.aspx?ID=5374350&GUID=DDFCFD4C-97BB-45B3-80A0-D93A23E07F9E&Options=&Search=>

³ https://library.municode.com/ca/hayward/codes/municipal_code?nodeId=HAYWARD_MUNICIPAL_CODE_CH11PUJUT_ART5STMAURRUCO

⁴ <https://hayward.legistar.com/LegislationDetail.aspx?ID=5523059&GUID=7112B7B8-AC21-4EC5-9289-D35DC0FCDE01&Options=&Search=>

⁵ <https://hayward.legistar.com/LegislationDetail.aspx?ID=6058171&GUID=CF24A795-A3B2-418F-A4FD-0C97B2C40222&Options=&Search=>

properties. The CSC voted unanimously to recommend that Council adopt the stormwater ordinance amendments. The CSC requested that staff focus on the largest litter generators first, including fast food establishments, coffee shops and retail stores. The CSC also requested signage be provided to those properties conducting good practices to control trash on their property. Staff concurred and will provide appropriate signage as public display for compliant properties so property owners can show their pride and to encourage others to help prevent litter.

DISCUSSION

Currently, the mandate for trash reduction in the City's stormwater system is 100% by July 1, 2025, as stated in the MRP 3.0. The City cannot achieve 100% compliance without controlling trash from private properties with their own private storm drains that bypass the City's storm drain inlets. To comply with the MRP 3.0, staff proposes to add language to the City's municipal Stormwater Management and Urban Runoff Control ordinance to provide enforcement tools to achieve trash reduction on private properties.

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 a more active role in managing trash from their establishments. City staff will review each business as appropriate prior to enforcement.

For private properties that are directly plumbed to the City's stormwater pipes and bypass the City's storm drain inlets, the proposed ordinance amendments would require trash reduction either through installation of full trash capture infrastructure or another equivalent method such as manual cleaning. The Water Board provides a list of approved full trash capture devices. Two examples of full trash capture devices for storm drain inlets are provided below as Figures 1 and 2.

Figure 1: Triton Drop Inlet Filter

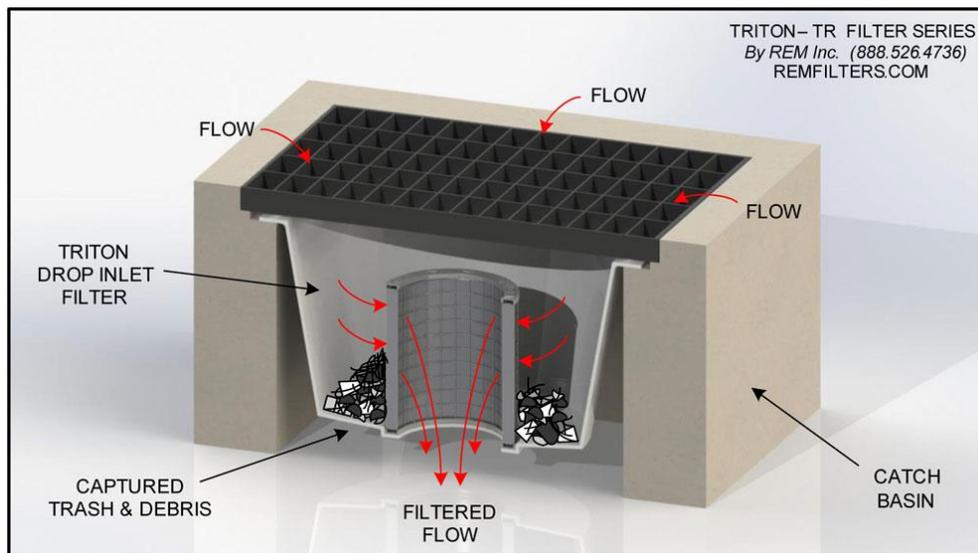
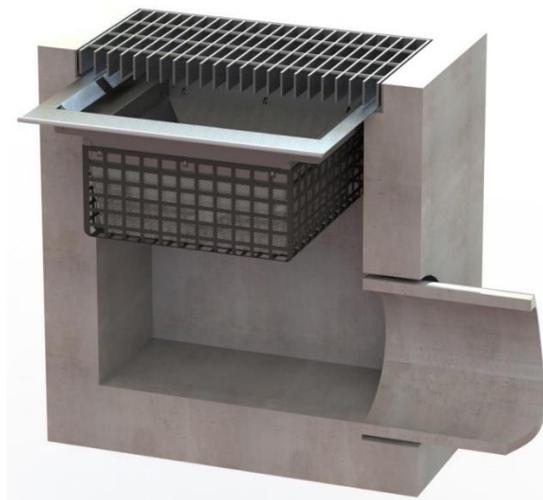


Figure 2: BioClean Grate Inlet Filter



The proposed ordinance amendments also address private properties that are not plumbed directly to the City’s stormwater pipes, but have surface flow to City streets, gutters and inlets. The proposed ordinance would require better trash management for private properties and would require enforcement by Water Pollution Source Control (WPSC) inspectors. To help mitigate trash from these properties, the City has installed 629 small trash capture devices in inlets where feasible. These devices require regular cleaning (a device more than 50% full is a violation of the MRP 3.0) and better trash control from private properties will help to reduce the City’s cost of maintaining the devices.

While the proposed changes to the ordinance include some new definitions, the bulk of changes are to Section 11-5.22, “Reduction of Pollutants in Stormwater”. The amended ordinance also removes the full text of the MRP at the end of the ordinance and replaces it with a link to the current permit to prevent the City’s ordinance from becoming outdated when the MRP is regularly updated every five years. The full text of the proposed amendments is available on the City’s website⁶ and in Attachment III – a summary is provided below:

- Define “Full Trash Capture System” as a device that traps trash down to 5mm in size as defined by the Regional Water Quality Control Board.
- Define “NPDES” as the National Pollutant Discharge Elimination System to update the ordinance with regulatory terms.
- Define “Stormwater Management Facility” as a device that treats stormwater such as a “Full Trash Capture System”.
- Define “Premises” as a property with structures, sidewalks, and parking strips (examples such as a parking lot or commercial building are included).
- Section 11-5.22 is amended to require:

⁶ https://www.hayward-ca.gov/sites/default/files/ARTICLE_5_STORMWATER_MANAGEMENT_URBAN_Runoff_edits_Final021423.pdf

- Installation of a Full Trash Capture System within four months of written notice to prevent trash and other pollutants from entering the drainage facilities. Also, an operation and maintenance agreement may be required to be recorded with the property to ensure the Full Trash Capture System is maintained.
- Any transfer of ownership of the property must be communicated to the City and the new owners must be informed of their new obligation to maintain the Full Trash Capture System on the property.
- Any alteration or removal of the Full Trash Capture System is unlawful.

City staff will conduct regular inspections of private properties with private storm drains that bypass the City's storm drain inlets as well as all properties not treated with City owned full trash capture downstream. Property owners with trash violations would be advised to employ trash reduction methods (either on-land pick up of trash or installation of full trash capture devices) to avoid future citations for non-compliance. If a trash concern is confirmed, the property owner may be given an enforcement action at the discretion of the inspector, which can be a written warning, notice of violation or a citation with a fine depending upon the egregiousness of the trash found during the inspection.

Enforcement actions will include a requirement for the property owner to submit a plan describing how they will manage trash so it does not impact the storm drain system. The owner will have 10 days to submit the plan. If the presence of trash persists, staff may escalate enforcement, which can include further citations and/or a requirement for installation of a full trash capture device if pick-up efforts to contain trash are insufficient to control trash on the property. If full trash capture is infeasible or the drainage is not directly connected to the City's main storm drainpipe in the street, then the property owner would be required to implement frequent manual cleaning of the property and staff would schedule regular inspections of the property to ensure compliance.

The new proposed language supports staff's efforts to implement trash reduction requirements in the MRP as well as achieve a high level of standards to keep Hayward clean and compliant with stormwater regulation. With the emphasis on trash compliance during stormwater inspections and follow up enforcement actions as needed, staff will be able to document compliance with the MRP in annual reports to the Water Board.

ECONOMIC IMPACT

Compliance with MRP Provision C.10 will result in costs to some Hayward businesses as compliance with trash reduction will require increased monitoring, trash pickup, and possible installation of trash capture facilities as determined through stormwater inspection and follow up for compliance. The cost of installing a trash capture device will depend on the shape and size of the storm drain inlets, number of inlets, and size of drainage area. The cost of a single device can range from a few hundred to thousands of dollars.

FISCAL IMPACT

The City's compliance with the MRP is managed by Water Pollution Source Control (WPSC) staff within the Environmental Services Division of the Public Works & Utilities Department. Implementing MRP 3.0 trash reduction regulations will require increased field duties, oversight, administrator analysis and reporting. Funding for MRP-related activities is currently provided by the City's stormwater enterprise fund, which is funded by an assessment on property tax bills. However, expenditures have increased and are expected to increase in the future. 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 and their committees to receive regional support for these efforts. Staff continues to seek external funding and grants for trash reduction.

STRATEGIC INITIATIVES

This agenda item relates to the Strategic Priority of *Invest in Infrastructure*. Specifically, this agenda item relates to the implementation of the following projects:

Project N22: Meet regulatory requirements for zero trash in stormwater by installing trash capture devices

Project N22a: Install trash capture devices

Project N22b: Perform related trash reduction activities

SUSTAINABILITY FEATURES

Preventing pollution from entering the storm drain system will benefit Hayward's aquatic ecosystems and the health of the San Francisco Bay and will help to create a clean and green community for Hayward residents and businesses.

ENVIRONMENTAL REVIEW

Adoption of the proposed amendments to the Stormwater Management and Urban Runoff Control Ordinance are not a project under the requirements of the California Environmental Quality Act, together with related State CEQA Guidelines (collectively, "CEQA"), because it has no potential for resulting in a physical change to the environment. In the event that this Ordinance is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guidelines section 15061(b)(3) because it can be seen with certainty to have no possibility that the action approved may have a significant effect on the environment. CEQA applies only to actions that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. In this circumstance, the proposed action would have no or only a de minimis effect on the environment. The Ordinance is also exempt from CEQA under CEQA Guidelines section 15308, because it is a regulatory action for the protection of the environment.

PUBLIC CONTACT

A letter explaining the proposed changes to the Stormwater Management and Urban Runoff Control ordinance was mailed to all property owners through the water bills over a period of three months (October through December of 2022). The letter explained the need for the ordinance change, the requirements of stormwater regulation to control trash from entering the environment and provided a link to this webpage⁷, which included the draft ordinance and listed public meetings (including the CSC and Council meeting) for the public to attend and comment about the proposed ordinance language. WPSC staff received two phone calls from single-family home property owners concerned about where and when to purchase full trash capture devices. Staff explained to the callers that the focus of the program will be on non-residential properties and any residential properties needing full trash capture devices would be notified and would first be given an opportunity to clean the property manually. The property owners understood and were happy the City was taking action to address litter.

NEXT STEPS

If Council adopts the draft ordinance amendments, staff will begin the new inspection program for all private properties to comply with trash reduction and implement further enforcement actions as needed. Staff expects that all properties subject to the new requirements will be inspected and will work with property owners to achieve the 100% compliance mandate by July 1, 2025.

Prepared by: Elisa Wilfong, Water Pollution Control Administrator
Erik Pearson, Environmental Services Manager

Recommended by: Alex Ameri, Director of Public Works

Approved by:



Kelly McAdoo, City Manager

⁷ <https://www.hayward-ca.gov/services/city-services/stormwater-services>