



DATE: March 14, 2022

TO: Council Sustainability Committee

FROM: Director of Public Works

SUBJECT Municipal Regional (Stormwater) Permit-MRP 3.0- Information and Discussion

RECOMMENDATION

That the Council Sustainability Committee (CSC) reviews and comments on this report.

SUMMARY

This report provides a summary of the reissuance for the third permit cycle Municipal Regional Permit (MRP), which is expected to be considered for adoption on July 1, 2022, by the San Francisco Bay Regional Water Quality Control Board (Water Board). The MRP contains stormwater regulatory requirements related 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. This report presents the proposed changes in the new MRP, commonly called MRP 3.0. Staff requests that the CSC 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 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'.

Staff's last report to the CSC on the MRP was on January 11, 2021¹ and 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. Also, on January 10, 2022², staff reported to the CSC on the requirements in the current MRP to regulate properties that discharge stormwater directly to the City's storm drain system, the recommended approach to address the requirements, and proposed amendments to the City's Stormwater Management and Urban Runoff Control ordinance³ (Chapter 11, Article 5 of the Municipal Code).

DISCUSSION

C.1. Prohibitions and Limitations (list of prohibited non-stormwater discharges): No significant changes are proposed.

C.3. New Development and Redevelopment: One of the significant proposed changes is to lower the threshold for development projects required to have above-ground stormwater treatment from 10,000 square feet down to 5,000 square feet and to make stormwater treatment requirements apply to road repair projects. Previously, road repair projects were exempt. Also, large detached single-family home projects that create 10,000 square feet or

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

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more of impervious surface would become regulated projects. Previously, all single-family homes were exempt from C.3 requirements. Changes to Green Infrastructure (GI) requirements would include a numeric target for new projects. The target would require new GI projects to treat at least three acres per every 50,000 population with a cap of ten acres in the five-year permit term. Given Hayward has a population of approximately 160,000, the City would need to install GI projects totaling nine acres by 2027.

C.4. Industrial and Commercial Site Controls: Additional reporting for industrial facilities regulated by the state and other aspects of C.4 inspection activities.

C.5. Illicit Discharge Detection and Elimination: Some additional tracking and reporting of illicit discharges and illegal dumping.

C.6. Construction Site Control: Some additional reporting.

C.7. Public Information and Outreach: Some additional reporting.

C.8. Water Quality Monitoring: All municipal Permittees are required to convene a Technical Advisory Group (TAG), either formed collectively or individually. The ACCWP, which includes all the Permittees in Alameda County, will likely create a sub-committee to serve as a TAG, in which Hayward can participate. The TAG is required to create a Low Impact Development Monitoring Plan, submit the plan by January 1, 2023, and implement the plan by 2024. The plan must include descriptive sampling and analysis of emerging pollutants of concern. In addition, the TAG must convene and develop a trash monitoring plan by September 30, 2022, and conduct monitoring by October 1, 2022.

C.9. Pesticides Toxicity Control: No significant changes are proposed in Provision C.9.

C.10. Trash Load Reduction: Currently, the mandate for trash reduction is 100% removal of trash from Permittee's stormwater system by July 1, 2022, as stated in the MRP 2.0. 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. The reduction credit 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. Offsets for creek and shoreline cleanups as well as direct discharge controls (cleaning up homeless encampments) will no longer be applicable after June 30, 2025.

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.

Permittees unable to attain 100% trash load reduction by June 30, 2025, would be required to submit a notice of noncompliance including a plan to come into compliance with the 100% mandate. Permittees may be granted additional time until June 20, 2026 to achieve 100% reduction.

MRP 2.0 also makes Permittees responsible for private properties over 10,000 square feet that contribute to trash pollution to the storm drain system. If those private properties have their own private storm drains that bypass the City's storm drain inlets (meaning the City cannot treat their stormwater downstream) then the City must require them to control their trash or install their own full trash capture systems. The change in the MRP 3.0 proposes to remove the 10,000 square-foot minimum area. As reported to the CSC on January 10, 2022⁴, staff has been mapping such properties per the current MRP requirement. If the 10,000 square-foot minimum is removed, the number of properties requiring assessment and inspections will grow significantly. Staff considers the current mandate reasonable and attainable.

C.11/C.12. Mercury Controls and Polychlorinated Biphenyls (PCBs) Controls: Provision C.12 states that Alameda County Permittees collectively have 9,374 acres of old industrial land likely to be contaminated with PCBs. The provision in the MRP 3.0 draft requires Permittees to, by June 2022, submit plans and schedules for implementing treatment controls addressing 10% (937 acres) of land classified as old industrial within Alameda County to reduce PCBs loads in stormwater.

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

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

C.15. Exempted and Conditionally Exempted Discharges: Water Board staff is proposing more reporting requirements regarding cleanup procedures and regional coordination for emergency firefighting activities as well as convening a regionwide Firefighting Discharges Working Group with Water Board staff to identify and evaluate opportunities to reduce the impact of emergency discharges to the storm sewer.

C.16. Discharges to Areas of Special Biological Significance: No significant changes are proposed in Provision C.16.

C.17. Discharges Associated with Unsheltered Homeless Populations: This is a new Provision requiring identification of efforts to address discharges associated with homelessness as well as mapping encampments and other controls.

C.18 and C.19 (only applicable to San Mateo and Contra Costa Counties)

⁴ <https://hayward.legistar.com/LegislationDetail.aspx?ID=5374350&GUID=DDFCFD4C-97BB-45B3-80A0-D93A23E07F9E&Options=&Search=>

C.20. Cost Reporting: Each Permittee shall annually prepare and submit a fiscal analysis of the capital and operation and maintenance costs incurred to comply with the MRP.

C.21. Asset Management: Each Permittee shall develop and implement by June 30, 2025, an Asset Management Plan and include a Climate Change Adaptation Report to identify potential climate change-related threats to assets and appropriate adaptation strategies.

The MRP 3.0 draft provisions that have the most significant impact to the City are C.3 (specifically the regulated project criteria and 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.

In addition, private properties that are directly plumbed to the City's stormwater pipes and bypass the City's storm drain inlets also are required to meet the trash reduction requirements either through full trash capture or another equivalent method. 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.

The ACCWP's comments to the draft MRP 3.0 addressed the most significant changes with Provisions C.3 and C.10 in their letter to the Water Board. The letter includes the Program's concerns related to changing development thresholds, deleting trash reduction credits, increasing regulation on small private properties for trash reduction, and the increase in administrative plans, meetings, and reporting. The letter provides suggestions to reduce the administrative burden and cost to municipalities with compromised permit language or to keep language as is from MRP 2.0. The ACCWP letter explains Permittees' goals and progress to date show our collective commitment to protecting the environment and that the increase in regulation distracts from current efforts and will delay progress to improve stormwater quality.

ECONOMIC IMPACT

Compliance with MRP Provision C.10 will result in costs to some Hayward businesses as compliance with trash reduction will result in increased monitoring, trash pickup, and possibly 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 Provisions with increased field duties, oversight, and administrator analysis and reporting, will increase the workload for WPSC staff. 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 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. As an example, Staff continues to seek external funding and grants for trash reduction and GI projects. Staff is currently in the design phase of a Caltrans-funded project to install two large trash capture devices – one at Arf Avenue near Hesperian Boulevard and one at Tennyson Road near I-880.

STRATEGIC ROADMAP

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

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

Project 17a: Install trash capture devices

Project 17b: Perform related trash reduction activities

SUSTAINABILITY FEATURES

Preventing pollution from entering the storm drain system will benefit Haywards'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.

PUBLIC CONTACT

No public contact has been made regarding this agenda item.

NEXT STEPS

The final revised draft MRP 3.0 will be released tentatively during mid-March, followed by a public hearing scheduled for mid-April. If appropriate, staff could convey the CSC's comments to the Water Board at the April hearing. The MRP 3.0 is scheduled to be adopted by the Water

Board on July 1, 2022. Once adopted, staff will review all additional requirements and plan accordingly with staff duties and workload. Staff plans to report to the CSC in September of 2022 the final MRP 3.0 requirements as well as recommended changes to the City's stormwater ordinance, if needed. Upon a recommendation from the CSC, staff would present the recommended ordinance amendments to Council in October 2022.

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Recommended by: Alex Ameri, Director of Public Works

Approved by:

A handwritten signature in black ink, appearing to read 'K. McAdoo', is written above a horizontal line.

Kelly McAdoo, City Manager