

RESOLUTION NO. _____

**A RESOLUTION OF THE COUNCIL OF THE CITY OF
SAN JOSE APPROVING A NEW CITY COUNCIL POLICY
6-28, ENTITLED, MANAGEMENT OF POLLUTANTS
DURING DEMOLITION OF APPLICABLE PROJECTS**

WHEREAS, the Federal Clean Water Act requires the City of San José (“City”) to operate under a Municipal Stormwater National Pollutant Discharge Elimination System (“NPDES”) Permit for the discharge of stormwater from urbanized areas to surface waters via the City’s stormwater collection system; and

WHEREAS, on May 11, 2022, the Regional Water Quality Control Board (RWQCB) adopted a revised Municipal Regional Stormwater National Pollutant Discharge Elimination System (“NPDES”) Permit (Stormwater Permit), effective July 1, 2022, which governs seventy-six (76) public entities including the City of San José; and

WHEREAS, the Stormwater Permit requires amendments to the San Jose Municipal Code Title 20, and policies that are incorporated into it; and

WHEREAS, in compliance with the City’s prior Stormwater Permit, the City developed a program requiring certain project applicants to complete a screening process regarding Polychlorinated Biphenyls (PCBs) during building demolition; and

WHEREAS, the Stormwater Permit increases requirements related to notifications, inspections, and disposal documentation of PCB containing materials; and

WHEREAS, the proposed City Council Policy 6-28 is consistent with the requirements of the Stormwater Permit; and

WHEREAS, the City's adoption of this resolution is categorically exempt from California Environmental Quality Action Section 15308 as Actions by Regulatory Agencies for Protection of the Environment;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

City Council Policy 6-28, entitled, *Management of Pollutants During Demolition of Applicable Projects* attached which is attached as Exhibit A and incorporated into this Resolution as if it were repeated in full, is hereby approved and shall become effective with the revised Stormwater Permit requirements on July 1, 2023.

ADOPTED this ____ day of _____, 2023, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

MATT MAHAN
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

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City of San José **COUNCIL POLICY**

TITLE	MANAGEMENT OF POLLUTANTS DURING DEMOLITION OF APPLICABLE PROJECTS	PAGE 1 of 4	POLICY NUMBER 6-28
EFFECTIVE DATE	REVISED DATE		
APPROVED BY COUNCIL ACTION			

PURPOSE

This Policy establishes the City of San José's (City) requirements to prevent Polychlorinated Biphenyls (PCBs) from entering the waterways during building demolition, consistent with the San Francisco Bay Region Municipal Regional Stormwater National Pollutant Discharge Elimination System (NPDES) Permit (or "Stormwater Permit"). The protection of local streams from polluted urban runoff advances the City's sustainability goals by ensuring good water quality, enhancing the beneficial use of local waterways, and enhancing the quality of wildlife habitat.

BACKGROUND

The Federal Clean Water Act requires the City of San José to operate under a Municipal Stormwater NPDES Permit for the discharge of stormwater via the City's stormwater collection system. On May 11, 2022, the Regional Water Quality Control Board adopted a revised Stormwater Permit for the San Francisco Bay Region. This Stormwater Permit governs 76 Bay Area municipalities, including the City of San José.

The Stormwater Permit mandates that the City: establish protocols to ensure most buildings constructed between 1950 and 1980 are tested for PCB-containing material prior to issuing a demolition permit; for applicable structures containing building materials with PCBs concentrations of 50 ppm or greater, require demolition contractors to provide notification to City and regulatory agencies (Water Board and U.S. EPA) at least one week before demolition; inspect applicable demolition sites to ensure construction pollutant controls are used to prevent discharge into the system; and require verification that PCBs in demolished buildings are properly managed. Single-family residences and wood frame structures are exempt.

City Council Policy 6-29: Post-Construction Urban Runoff Management and

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City Council Policy 8-14: Post-Construction Hydromodification Management are related, companion policies that address the management of stormwater runoff to maintain predevelopment rates of infiltration, evaporation and runoff from the property being developed and to minimize erosion and sedimentation in local rivers and creeks.

POLICY

The Management of PCB-Containing Material and Waste During Building Demolition

This Policy requires the management of PCB-Containing materials during building demolition activities. The Policy applies to the demolition of an entire building, whether or not it is part of a larger development project. Applicable structures undergoing emergency demolition because they present an immediate risk to the public health and/or safety are exempt from implementing the pre-demolition screening requirements in the policy below. However, these Applicants must submit information about the project (address, construction date, and date of demolition) to the City as soon as possible under the circumstances of the emergency. Applicants for these projects must also comply with all other relevant City permitting processes or requirements related to that emergency. ^(Ord.)

A. Definitions

For the purposes of this Policy, the following terms shall have the following meaning.

1. **"Applicable Project"** means a project that involves the demolition of one or more entire Applicable Structure(s).
2. **"Applicable Structure"** means a building that was constructed or remodeled between January 1, 1950 and December 31, 1980, inclusive, other than single-family residences and wood-framed structures.
3. **"PCBs"** means polychlorinated biphenyls.
4. **"PCBs Screening Assessment Applicant Guide"** means a City-provided document package that includes an overview of the screening process, applicant instructions, a process flow chart, a Screening Assessment Form, and a protocol for assessing Priority Building Materials before building demolition.
5. **"Priority Building Materials"** means the following, but not limited to:
 - a. Caulking (commonly used around windows and doors, at structure/walkway interfaces, in expansion joints);
 - b. Thermal or fiberglass insulation (commonly used around HVAC systems, boilers, or heating transfer piping, and inside walls or crawl spaces);
 - c. Adhesive/mastic (commonly used below carpet and floor tiles, under roofing materials, under flashing); and

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- d. Rubber window gaskets (commonly used in lieu of caulking to seal around windows in steel-framed buildings).
- 6. **“PCBs Screening Assessment Form”** means a City-approved form to identify Applicable Projects which must be completed by applicants in compliance with the PCBs Screening Assessment Applicant Guide.
- 7. **“Supporting Documents”** means the reports required to be submitted for all Applicable Projects, including but not limited to:
 - a. Contractors Report from Pre-Demolition PCBs Building Survey;
 - b. A summary of results for PCBs concentrations in Priority Building Materials; and
 - c. Copies of analytical laboratory reports and the quality assurance and quality control (QA/QC) checklist.

B. Screening Requirements.

- 1. Before any demolition permit may be issued, the Applicant shall complete a PCBs Screening Assessment process for identifying PCBs in Priority Building Materials.
- 2. Submittal of a complete PCBs Screening Assessment Form is required for all demolition permits or any permit involving the demolition of a building and shall include:
 - a. The owner and project information, including location, year building was constructed and remodeled (if applicable), description of building construction type and use, and anticipated demolition date;
 - b. A determination whether the project is an Applicable Project;
 - c. The Applicant’s certification, under penalty of perjury, of the accuracy of the information submitted.
- 3. Submittal of Supporting Documentation is required for all Applicable Structures and shall include:
 - a. Identification and assessment of all Priority Building Materials
 - b. Results of the screening assessment
 - c. Copies of analytical laboratory reports and the quality assurance and quality control (QA/QC) checklist
- 4. Applicants must ensure that all information in the PCB Screening Assessment Form and Supporting Documentation is accurate and complete and shall immediately submit written notification to the City detailing the true site conditions if Applicant discovers that the information is inaccurate or incomplete.
- 5. The City will not issue any demolition permit for an Applicable Project without a complete and accurate PCBs Screening Assessment Form and Supporting Documents.

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C. Notification and Site Requirements

For Applicable Projects containing any building material(s) with polychlorinated biphenyls (PCB) concentrations of 50 parts per million (ppm) or greater:

- a. Applicants shall provide written notification to the City, the San Francisco Bay Regional Water Quality Control Board, and U.S. EPA at least seven (7) working days before any demolition and shall ensure that this notice contains the date that the actual demolition is to occur; and
- b. Project sites must be inspected to ensure that effective construction pollutant controls are used to prevent discharge into the storm sewer system. The City may impose additional site controls as determined during the inspection or approval process including sweeping the project site and the streets around the property with street sweepers that will effectively remove sediment and dust; and
- c. Applicants shall conform with the best management practices (BMPs) for dust and sediment control as specified in The Association of Bay Area Government's Manual of Standards Erosion & Sediment Control Measures and California Storm Water Best Management Practice Handbook.

D. Documentations and Retention of Records.

Applicants shall provide the City with the initial generator's certification in the Uniform Hazardous Waste Manifest provided to the transporter of the hazardous waste within ten (10) working days of the transport of the materials. Within ten (10) working days of the hazardous waste documentation becoming available, Applicants shall provide the City with official documentation that the building materials with PCBs concentrations of fifty (50) ppm or greater were disposed appropriately according to state and federal regulations. Applicants shall maintain documentation of the results of the Priority Building Materials screening assessment for a minimum of five years after submittal to the City.

E. Compliance with all Obligations.

Nothing in this or any other City Policy relieves the Applicant from complying with all state and federal requirements regarding the removal, transport, documentation, or storage of PCBs. Applicant shall determine if additional agency notification or approvals, or additional sampling for and abatement of PCBs, is required under other applicable law. Applicant shall comply with all federal and state laws and regulations, including but not limited to health, safety, and environmental laws and regulations, that relate to management and cleanup of PCBs, including but not limited to PCBs in Priority Building Materials, other PCBs-contaminated materials, PCBs-contaminated liquids, and PCBs waste. The requirements of this section do not replace or supplant the requirements of state or federal law, including but not limited to the Toxic Substances

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Control Site Act, 40 Code of Federal Regulations (CFR) Part 761, and California Code of Regulations (CCR) Title 22.