



Memorandum

TO: TRANSPORTATION AND
ENVIRONMENT COMMITTEE

FROM: Kerrie Romanow

SUBJECT: SEE BELOW

DATE: October 14, 2020

Approved

Date

10/26/20

**SUBJECT: MUNICIPAL REGIONAL STORMWATER NPDES PERMIT STATUS
UPDATE**

RECOMMENDATION

Accept a status update on the Municipal Regional Stormwater NPDES Permit reissuance.

OUTCOME

The Committee will be updated on the current status and next steps on the reissuance of the Municipal Regional Stormwater NPDES Permit.

EXECUTIVE SUMMARY

The City of San José operates a robust multi-departmental stormwater program under the Municipal Regional Stormwater National Pollutant Discharge Elimination System (NPDES) Permit issued by the San Francisco Bay Regional California Water Board (Water Board). The current 5-year Permit, effective January 1, 2016, is set to expire in January 2021. The City filed an application for a renewed permit and staff is now engaged in discussions with the Water Board and its staff on the terms and conditions. For example, City staff and other co-permittees appear before the Water Board and meet with its staff to inform the decision makers about the impacts of imposing additional requirements in light of the social and economic impacts from the COVID-19 pandemic.

Water Board staff proposes to make existing requirements more stringent, modify or phase out existing program credits, and include new requirements with the next Permit reissuance. The most significant changes being considered are for provisions that address new and redevelopment, green stormwater infrastructure, trash load reduction, and polychlorinated biphenyls control measures. In addition, staff focuses on new requirements related to cost reporting and addressing water quality impacts from homelessness. This memorandum provides

an update on key requirement changes or additions as well as the next steps for permit reissuance.

BACKGROUND

The City's storm sewer system captures stormwater through approximately 32,000 inlets where it is then conveyed through approximately 1,130 miles of sewer mains, and discharged largely without treatment, through 1,500 outfalls, to local creeks and streams and ultimately to San Francisco Bay. Discharged water is comprised of rainfall, irrigation water, and other water used outdoors along with pollutants it can collect and transport as it flows across rooftops, sidewalks, driveways, streets, and landscaping.

The Federal Clean Water Act requires the City to operate its municipal separate storm sewer system under a National Pollutant Discharge Elimination System permit (Permit) for the discharge of stormwater to surface waters. The Permit specifies actions necessary to reduce the discharge of pollutants in stormwater to the maximum extent practicable and effectively prohibits non-stormwater discharges into the municipal storm sewer system to protect local creeks and the Bay.

The City's stormwater program comprised of a variety of elements that minimize pollutants in stormwater runoff and in the City's creeks and rivers. Actions to prevent pollution from entering the City's storm sewer system involve various City operations, as well as the daily activities of San José residents and businesses. Accordingly, multiple City departments are actively engaged. Collaborative efforts are critical to preventing stormwater pollution and protecting water quality. Responsible departments include: Environmental Services (ESD); Public Works (PW); Planning, Building and Code Enforcement (PBCE); Transportation (DOT); Parks, Recreation and Neighborhood Services (PRNS); Airport, Housing, and the City Attorney's Office.

The current Stormwater Permit became effective in January 2016 and expires January 1, 2021. On July 2, 2020, the City, along with its regional co-permittees, filed an application for a renewed permit. It is anticipated that the Water Board will administratively extend the current permit until the next Permit is adopted. Water Board staff began a stakeholder process in late 2018 for the development and reissuance of a new Permit. City staff has collaborated with the local jurisdiction partners of the Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP) and the jurisdictions of the broader Bay Area Stormwater Management Agencies Association (BASMAA). On June 10, 2020 Water Board staff presented an update to their board on the status of the Permit development process and shared some potential changes that they were considering. Stakeholders, including the City, presented their concerns to the board members on the potential changes being proposed by staff.

ANALYSIS

Stormwater Permit Reissuance

Water Board staff is proposing changes aimed at improving water quality, but the aggregate would place a considerable strain on City resources, particularly given the impacts from the COVID-19 pandemic. City staff and other co-permittees appeared before the Water Board to express concerns and detail potential impacts that could occur as a result of these changes. City staff and co-permittees continue to meet with Water Board staff and express the importance of limiting Permit changes in consideration of the social and economic impacts from the COVID-19 pandemic.

Modifications to Existing Requirements

Potential changes to Permit requirements brought forth by Water Board staff affect many Permit provisions but most significantly the “New Development and Redevelopment”, “Trash Load Reduction”, and “PCBs Controls” provisions. Proposed changes to these provisions could impact multiple City departments that are tasked with implementing programs and policies to maintain compliance with these provisions as shown in Table 1. In addition, Water Board staff are discussing new requirements related to Permit cost reporting and addressing homelessness. Significant changes and new requirements proposed by Water Board staff are summarized in the following sections.

Table 1

| Permit Provision | Responsible City Departments | | | | | | |
|---|------------------------------|-----|---------|------|------|----|---------|
| | ESD | DOT | Housing | PBCE | PRNS | PW | Airport |
| New Development and Redevelopment (Green Stormwater Infrastructure) | X | X | | X | X | X | X |
| Trash Load Reduction | X | X | X | X | X | X | |
| PCBs Controls | X | X | | X | | X | |

New Development and Redevelopment and Green Stormwater Infrastructure

The current Permit mandates that new development and redevelopment projects (Regulated Projects) include treatment measures to manage stormwater runoff pollutants and prevent increases in runoff flows from project sites when they create or replace 10,000 square feet or more of impervious surface or 5,000 square feet for certain heavy polluting land uses, such as gas stations. Road projects are also regulated if they include the creation of 10,000 square feet of newly constructed contiguous impervious surface and add additional traffic lanes.

Water Board staff is proposing potential changes to the Permit that would make the threshold for all parcel-based Regulated Projects 5,000 square feet of new or replaced impervious area. They also have proposed making new and redeveloped detached single-family homes Regulated Projects if they create or replace 10,000 square feet or more of impervious surface. Currently,

detached single-family home projects that are not part of a larger plan of development are exempt. If these changes are included in the updated Permit they will result in more public and private development projects in San José being subject to additional stormwater review led by PW and PBCE. The proposed changes would also result in more installation of stormwater treatment measures which could increase construction costs for City-initiated projects, impacting City departments such as PW, and land-owning departments such as PRNS and the Airport. Under the current Permit, the City developed a Green Stormwater Infrastructure Plan (GSI Plan) for incorporating low impact development drainage design elements that will connect to existing storm drain infrastructure on public and private lands. Water Board staff have proposed setting GSI implementation targets in the next Permit which could require the City to install GSI at a faster rate. In addition, Water Board staff want to further require GSI implementation through modifications to current roadway project requirements. If included with the Permit reissuance, their proposed change would require new or significantly reconstructed roadways that are one acre in size to include GSI regardless of whether new lanes are added. These proposed changes could require the inclusion of GSI into a greater number of DOT projects, affecting project costs and completion timelines.

Trash Load Reduction

The current Permit sets a goal of 100% trash load reduction, or no adverse impact to receiving waters from trash, by July 1, 2022 and established interim mandatory targets. In 2019, San José achieved 96.8% trash load reduction, far exceeding the interim target of 80%. This reduction was achieved by implementing a combination of structural trash controls, source controls, trash assessments, creek cleanups, and direct discharge programming.

Water Board staff has proposed setting a new compliance date for 100% trash load reduction by 2025 with an interim target of 90% by 2022. However, Water Board staff has proposed removing credits for existing source control efforts and phasing out offsets for direct discharge controls and creek cleanups. Source control actions adopted by the City include the single-use plastic bag and polystyrene bans, in 2012 and 2014, respectively. These source control actions allow the City to claim a 10% credit and help to reduce the prevalence of single-use products that do not break down in the environment and pollute our waterways.

The City currently receives 15% credit for the Direct Discharge Trash Control Program which removes trash and debris through homeless encampment cleanups and represents the collective efforts and close coordination among various City departments (ESD, PRNS, Housing, and San José Police Department); contractors; local, state and federal agencies (Valley Water and California Department of Fish and Wildlife); and non-profit organizations (Downtown Streets Team, Keep Coyote Creek Beautiful and South Bay Clean Creeks Coalition). Additionally, the City receives 10% credit for additional creek cleanups which are often led by non-profit organizations who have conducted hundreds of cleanups that have removed 983 tons of trash from waterways. The benefits of these programs reach far beyond the tonnage of trash removed from San José waterways. Unlike structural trash controls, these programs offer an opportunity to educate and engage residents in a way that can create long lasting support of environmental and community efforts.

By including offsets and credits in the Permit, the Water Board provides cities leverage and another tool for obtaining support for direct discharge, source control, and additional creek cleanup programs. Without the percent reduction credits and offsets from these programs the City's total trash load reduction percentage will be reduced by 35%. The Water Board staff's proposed changes place a greater reliance on structural controls such as large trash capture devices. Since 2011, the City has installed 32 large trash capture devices at a cost of approximately \$27 million. The City has constructed more large trash capture devices than any other municipality in the Bay Area and anticipates installing additional devices to meet permit requirements. However, relying solely on these devices to address full trash capture requirements would be both financially and technically infeasible. Also, since 85% of trash in waterways is attributed to sources outside the municipal storm sewer system, expending resources to install new trash capture devices will likely have a limited impact on the overall trash in waterways.

In addition to the removal of current percent reduction credits and offsets, Water Board staff has indicated that existing private parcels greater than 10,000 square feet that are plumbed directly to the municipal storm sewer system may need to install structural controls for trash or implement practices that would be equivalent for trash load reduction. This could create an additional burden on existing PW and PBCE permitting and inspection programs as well as create additional costs for local businesses.

Polychlorinated Biphenyls Controls

Polychlorinated Biphenyls (PCBs) are toxic and exist in unhealthy quantities in the San Francisco Bay. As such, the Water Board has assigned a particularly high priority to PCBs in the Permit since urban stormwater is thought to be the primary pathway of new PCBs loads to the San Francisco Bay. Bay-wide, stormwater permittees are required to reduce PCBs loads by implementing a variety of control measures that could include removal of impacted sediment in large trash capture devices, additional street sweeping, inlet cleaning, green stormwater infrastructure, and the referral of suspected PCBs source properties to the Water Board.

Water Board staff is proposing much more prescriptive requirements to achieve PCBs load reductions. In addition to the referral of suspected PCBs source properties, Water Board staff want permittees to evaluate and consider other types of control measures to address areas with high concentrations but no identifiable sources of PCBs. This could impact DOT if additional street sweeping and inlet cleaning are required for those areas.

As of July 1, 2019, project applicants must complete PCBs screening forms prior to City approval of building demolitions. Those projects are then responsible for proper disposal of demolition materials if PCBs are found in them. Water Board staff has suggested that municipalities should inspect demolition projects for proper PCBs waste disposal implementation and then report inspection findings. This additional inspection requirement could burden existing building inspections. In addition, Water Board staff has indicated that municipal bridge demolition or replacement projects could be incorporated into the PCBs control

requirements in the next Permit, which would add additional cost and time constraints onto City-initiated projects.

New Requirements

Permittees and Water Board staff have been meeting in two separate workgroups to discuss additional requirements that Water Board staff is proposing for the next Permit. One group is focusing on requirements related to reporting costs for Permit implementation while the other is evaluating potential requirements to address water quality impacts from homelessness.

While the details of the cost reporting requirements have not been presented, Water Board staff is considering categories of costs to be reported including staff costs, capital costs, contract costs, operation and maintenance costs, and administrative costs. Permittees are proposing to develop a cost reporting framework and methodology report which would be submitted to the Water Board Executive Officer for approval and would outline guidance and expectations on how to proceed with reporting costs. As noted above, the City operates a robust multi-departmental stormwater program and a cost reporting requirement will likely result in many departments having to track costs differently.

In addition, Water Board staff recognizes that homelessness can result in water quality impacts to local waterways and they initiated a workgroup to discuss potential requirements to address those impacts. Water Board staff is considering requiring permittees to track and report data related to homelessness such as annual point in time census data and related information, such as population numbers and locations. They have also indicated that they are interested in permittees reporting on programmatic efforts such as interdepartmental coordination. The City's interdepartmental Direct Discharge Trash Control Program already tracks and reports homeless data and interdepartmental collaboration. However, Water Board staff indicated the need for new requirements to collect and review water quality data and identify practices to address potential water quality impacts and public health impacts from discharges associated with homelessness.

Next Steps

Staff continues to participate in regional workgroup meetings with Water Board staff and other co-permittees to discuss potential changes for the next Stormwater Permit. Water Board staff has indicated that they anticipate releasing an Administrative Draft of the Permit by early November but that it may not include all provisions, particularly those that are more complex. Originally, Water Board staff expected to release a Tentative Order in January 2021 with a planned approval date in April 2021. However, due to the delays in Administrative Draft language, that schedule is expected to be delayed which could potentially impact the previously planned effective date of July 1, 2021 for the next Permit. The City will provide comments on both the Administrative Draft and Tentative Order, once released.

EVALUATION AND FOLLOW-UP

Staff will return to the Transportation and Environment Committee to update the status of the Stormwater Permit Reissuance in the Spring of 2021.

PUBLIC OUTREACH

This memorandum will be posted on the City's Council Agenda website for the November 2, 2020 Transportation and Environment Committee Meeting.

COORDINATION

This memo has been coordinated with the Departments of Planning, Building and Code Enforcement, Public Works, Transportation, Parks, Recreation and Neighborhood Services, the Airport, the City Attorney's Office, and the City Manager's Budget Office.

Staff has additionally convened a citywide coordination team comprised of representatives from City departments including the departments of Planning, Building and Code Enforcement, Public Works, Transportation, Parks, Recreation and Neighborhood Services, and the Airport to ensure key City departments impacted by the Permit are updated on proposed changes and given the opportunity to provide input.

COST SUMMARY/IMPLICATIONS

The City will respond to cost implications in permit language in future budget processes.

CEQA

Not a Project, File No. PP17-009, Staff Reports, Assessments, Annual Reports, and Informational Memos that involve no approvals of any City Action.

/s/

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For questions, please contact Jeff Sinclair, Senior Environmental Program Manager, Environmental Services, at (408) 793-5358.