



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: John Stufflebean

SUBJECT: SEE BELOW

DATE: 03-02-09

Approved

John Stufflebean

Date

3/5/09

COUNCIL DISTRICT: City-Wide

**SUBJECT: REPORT ON THE DEVELOPMENT AND ADOPTION OF THE
MUNICIPAL STORMWATER NATIONAL POLLUTANT DISCHARGE
ELIMINATION SYSTEM PERMIT**

RECOMMENDATION

It is recommended that the City Council:

1. Authorize the submission of written technical and legal comments by April 3, 2009 to the San Francisco Bay Regional Water Quality Control Board (Water Board) concerning the Water Board's Revised Tentative Order for a Municipal Regional Stormwater National Pollutant Discharge Elimination System Permit (Regional Permit), dated February 11, 2009;
2. Authorize City participation in Water Board public hearings related to the adoption of the Regional Permit, including presentation of testimony and comments at the hearing scheduled for May 13, 2009;
3. Direct staff to engage stakeholders in discussions concerning the trash related programming specified in the Regional Permit and provide specific feedback to the Water Board; and
4. Direct staff to work with the Mayor's Office to identify representation from the City Council to address the Water Board concerning the Regional Permit.

OUTCOME

Approval of this recommendation will provide direction to staff and the Attorney's Office for the submission of written technical and legal comments from the City to the Water Board on the Regional Permit for stormwater discharge, and will ensure that the Water Board is aware of City concerns with the Regional Permit. The recommendation directs that City comments on the

Regional Permit focus on the City's goal for a permit that is beneficial to water quality and our community; feasible to successfully implement; and reasonable as a regulatory tool. Furthermore, this recommendation directs staff to engage key stakeholders concerned with trash and litter in an effort to achieve practical trash control provisions that will effectively address trash impacts in our creeks and waterways over time. It will also provide opportunity for Council to directly communicate City concerns and goals to the Water Board. Ultimately this recommendation will help guide enhancements to improve the condition of local creeks and the Bay.

BACKGROUND

The Federal Clean Water Act requires the City to operate under a National Pollutant Discharge Elimination System (NPDES) stormwater municipal permit for the discharge of stormwater to surface waters via the City's storm sewer collection system. San José is subject to a stormwater permit issued to the Santa Clara Valley Urban Runoff Pollution Prevention Program (Countywide Program), a collection of 15 agencies in Santa Clara County whose land area drains to South San Francisco Bay.

The City is currently operating under a stormwater permit which expired on February 21, 2006, and was administratively extended by the San Francisco Bay Regional Water Quality Control Board (Water Board). Water Board staff propose to replace the current countywide municipal stormwater permits with a Municipal Regional Permit (Regional Permit) for all 76 Bay Area municipalities in an effort to standardize stormwater requirements in the region. A Tentative Order for the Regional Permit was released by the Water Board on December 4, 2007. Staff provided an overview of and recommendations on the Tentative Order to the Transportation and Environment Committee on January 25, 2008. The City provided substantial technical and legal comments on the Tentative Order on February 29, 2008, and City staff and elected officials provided testimony at the Water Board public hearing held on March 11, 2008.

Since the Water Board's March 2008 public hearing, City staff has continued to participate in the permit development process through the Countywide Program, the Bay Area Stormwater Management Agencies Association (BASMAA), and individually as a City including discussions with the Water Board staff on revisions to the Tentative Order.

ANALYSIS

The Water Board released a Revised Tentative Order on February 11, 2009. Based on an initial review, staff has found that the Water Board staff has made considerable improvements to several of the permit provisions, which are responsive to the City's previous comments. These key improvement areas include:

Treatment Measures for Trails and Road Rehabilitation Projects - The Permit now provides an exemption from the required treatment measures for trails built to direct stormwater to

adjacent vegetated areas, or other non-erodible permeable areas. This exemption supports the City's Green Vision goal to add an additional 49 miles of trails by 2022. Additionally, the previously proposed requirement to include stormwater treatment into significant road rehabilitation projects has been replaced with a pilot-project approach to road runoff treatment. These changes are successfully responsive to the City's concerns about the overwhelming resource impacts of the previous draft to these capital projects.

Street Sweeping and Equipment Selection and Operation - The overly prescriptive requirements related to street sweeping and street sweeping equipment have been removed, and the focus has shifted to the effectiveness of these activities at removing pollutants as the impetus for expanding this maintenance function.

Storm Drain Inlet Cleaning and Inspection - The previous requirement to inspect and clean all inlets prior to the rainy season has been removed and replaced with a new requirement for the City to conduct a screening of key collection system check points in accordance with regular inlet maintenance activities. This allows the City to retain control and flexibility in deploying its maintenance workforce, and to use pollutant removal as the driver for augmenting this maintenance function.

Streamlined Reporting for Inspection Programs - Transaction level reporting has been removed and replaced with appropriate summary level reporting requirements.

Mobile Businesses Inspection - The requirement to inspect mobile business establishments during their field activities has been replaced with a provision which encourages regional collaboration, outreach, and focused inspection, consistent with existing enforcement strategies.

City staff finds that the Water Board staff has been very responsive to several of the comments submitted in response to the 2007 Tentative Order permit provisions. However, there are key provisions that continue to cause concern. A summary of the most significant areas of concern and recommended City position follows. Staff plans to submit written comments to the Water Board based on these significant concerns in addition to detailed comments on other provisions where clarifications of language and streamlining of certain requirements are necessary.

Trash Reduction

Reducing the impact of trash in our creeks is an important endeavor for the environment and the community. The City has already invested significant resources to reducing the presence of trash and litter in local creeks and is aligning resources to make additional strides. The problem, however, is immensely complicated and the sources extend beyond just the storm drain system.

The Water Board staff has modified the trash reduction provisions of the Regional Permit and reduced some of the prescriptive and redundant trash solutions. What remains, however, is still an exceptionally aggressive program to identify, assess, and clean-up specified 'Hot Spots.' Under the proposed provision, San José will be responsible for 33 Hot Spots and required to remedy the trash and litter problem in these areas within the five-year permit term. The scale of

this effort is tremendous, and given the complexity of sources and pathways for trash reaching the creeks, the City's ability to remedy the trash problem at all 33 'Hot Spots' within five years is tenuous. While staff acknowledges that appropriate efforts will include structural controls, increased maintenance practices, and enhanced pollution prevention, the framework set forth in the Permit would likely result in the City falling into non-compliance during the permit cycle.

City Position: Staff recommends that the City continue working with Water Board staff and engage key stakeholders in developing a reasonable approach to control trash in our creeks. The City should request that the number of 'Hot Spots' required in San José be reduced, and that control strategies be phased in over the permit term and documented to demonstrate a good faith effort toward remedying the locations. This will provide staff with the opportunity to gain better understanding of key sources and pathways of trash to individual locations and to implement the most appropriate and effective solutions.

Exempted and Conditionally Exempted Discharges

This provision applies to five different discharge types and specifies the conditions under which the discharges are allowed to go to the storm drain system. Requirements as specified in the Regional Permit for two of these discharge types will pose a significant impact to City operations.

Permitting and monitoring of non-stormwater discharges such as pumped groundwater, foundation drains, water from crawl spaces and footing drains to the storm drain system would be a new function of the City. Additionally, this provision includes overly prescriptive monitoring requirements that in many cases would be cost-prohibitive and could create a situation where more unauthorized non-stormwater discharges occur.

City Position: Staff recommends that the City request the establishment of a flow threshold and minimum required Best Management Practices in lieu of a new regulatory program.

The provision also imposes new monitoring requirements on planned, unplanned, and emergency discharges of the potable water system. New monitoring requirements will have significant impact on the operations of the City of San José Municipal Water System (MWS) and other water retailers and would require the City to monitor discharges from the system at point-of-discharge and at receiving waters. The MWS may also be at risk of exceeding the discharge benchmark for pH in some instances, due to the pH of the source water (which is from Hetch Hetchy), which can exceed the specified benchmark range. Meeting these provisions would require an investment in equipment and personnel that would have to be passed on to the MWS rate payers. Financial impacts of this provision will extend to the customers of the City's two private water retailers as well.

City Position: Staff recommends that the City request substantial revision to this provision, emphasizing the implementation of best management practices unless the water quality monitoring program also set forth in the permit indicates the need for enhanced control and tracking of potable water discharges.

Diversion of Dry Weather and First Flush Flows to Publicly Owned Treatment Works (POTW)

Proposed conditions require that a feasibility study on the diversion of dry weather and first flush flows to the sanitary system be conducted, and require implementation of a flow diversion pilot without regard for results and findings of the feasibility study. It is clear from even preliminary exploratory discussions that any potential stormwater diversion to the sanitary system will pose significant engineering, regulatory, financial, legal and institutional challenges. The two leading Bay Area wastewater and stormwater associations have plans to evaluate this element to gain a better understanding of the issues related to diversion of stormwater to the sanitary system.

City Position: Staff recommends that the City request more time be allowed for coordination with POTWs on this issue, that additional time be allowed for the implementation the feasibility study, and that subsequent conditions be based on the findings of the feasibility study.

Maintenance and Operation of Pump Stations

This provision requires that the City augment pump station maintenance and operations activities with dry weather monitoring and post-storm inspection and cleaning activities. Corrective actions are required if monitoring results fall below a threshold. The extent of the corrective actions that may be required is not presently known, and may have significant impact on operations and maintenance efforts. These additional activities will not only increase the workload of the maintenance crews, it will also require additional equipment and training for the staff for data collection and reporting. The stormwater system includes more than 25 pump stations of varying sizes, not all which flow to a water body.

City Position: Staff recommends that the City request that only pump stations of significant size and that discharge directly to a creek or water body be included under this provision, and that the provision be revised to ensure that pump station operations are adequately supported to protect public safety.

New and Redevelopment Treatment Measures

While many significant issues (such as trails and road rehabilitation projects) in this provision have been successfully addressed in the recent draft, several outstanding issues remain. Most significantly, this provision requires that the City submit information to the Water Board on certain individual development projects before final approval has been granted by the City Council. This requirement would be triggered when development projects employ mechanical devices (e.g., vaults and drain inserts) for stormwater treatment instead of landscaped based measures (e.g., swales and bioretention). In some cases, Water Board approval of the treatment measures would be needed before the City could issue approval. Water Board staff have formally cited landscaped based measures as superior to mechanical devices for treatment effectiveness and the greater opportunities for water infiltration and groundwater recharge. This permit provision formalizes their position. Staff is concerned that the proposed approach limits options for a site and that the requirement for project-specific approval by the Water Board is likely to create unnecessary project delays and fundamentally encroaches upon the City's land

use authority. It should remain up to the City to evaluate the feasibility of treatment measures as part of the development review process.

City Position: Staff recommends that the City request removal of any requirement to submit individual projects to the Water Board for approval. Staff will work with Water Board staff to determine an information sharing mechanism that balances the needs of the land use process with stormwater permit objectives.

Based on the City Council's direction, staff will develop detailed written comments on the Regional Permit to be submitted to the Water Board by April 3, 2009. Over the next two months, staff will also participate with other regional municipalities in discussions with Water Board staff to resolve the outstanding concerns and comments on the permit provisions. Staff will also work with the Mayor's Office to coordinate City representation and testimony at the Water Board's Public Hearing, which is currently scheduled for May 13, 2009.

In anticipation of permit adoption and implementation, staff is also conducting an assessment of the resource and cost impacts associated with complying with the provisions of the Regional Permit. This assessment will be predicated on the City's significant concerns as discussed in this report being addressed and remedied prior to permit adoption. The cost impacts will be provided to the City Council.

EVALUATION AND FOLLOW-UP

An update on the Regional Permit will be provided to the City Council in the form of an Informational Memorandum after the Water Board's Public Hearing in May 2009.

PUBLIC OUTREACH/INTEREST

City staff will continue to coordinate with key stakeholder and other Bay Area municipalities to review and refine the provisions of the Regional Permit and evaluation of impacts.

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

HONORABLE MAYOR AND CITY COUNCIL

03-02-09

Subject: Municipal Stormwater NPDES Permit

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Although this action does not meet any of the criteria above, this memorandum is posted on the City's Council Agenda Website for the March 24, 2009 Council Agenda.

COORDINATION

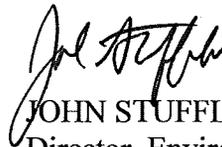
The Environmental Services Department is coordinating review of the Regional Permit with the departments of Public Works; Transportation; Parks, Recreation and Neighborhood Services; General Services; Planning, Building and Code Enforcement; the Redevelopment Agency; and the City Attorney's Office.

COST SUMMARY/IMPLICATIONS

Staff will provide detailed estimates of the resources and costs required to comply with the provisions of the Regional Permit during the FY 09-10 Budget Process based on best available information, and expect to bring forward additional cost information as outstanding issues are resolved and the permit is adopted.

CEQA

Not a project.



JOHN STUFFLEBEAN
Director, Environmental Services

For questions, please contact Melody Tovar, Deputy Director, Environmental Services Department Watershed Protection Division, at (408) 277-3892.