

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – OFFICE OF CHIEF COUNSEL
DECEMBER 6, 2016**

ITEM 3

SUBJECT

CONSIDERATION OF A PROPOSED ORDER FOR STATE WATER BOARD REVIEW ON ITS OWN MOTION OF WASTE DISCHARGE REQUIREMENTS ORDER NO. R2-2015-0049, MUNICIPAL REGIONAL STORMWATER NPDES PERMIT FOR MUNICIPALITIES WITHIN THE COUNTIES OF ALAMEDA, CONTRA COSTA, SANTA CLARA, AND SAN MATEO, THE CITIES OF FAIRFIELD, SUISUN CITY AND VALLEJO, AND VALLEJO SANITATION AND FLOOD CONTROL DISTRICT - **SWRCB/OCC FILE A-2455(a) through (m)**

DISCUSSION

On May 19, 2015, the San Francisco Bay Regional Water Quality Control Board (San Francisco Water Board) adopted Waste Discharge Requirements Order No. R9-2015-0049 (San Francisco Bay MS4 Order) regulating MS4 discharges within the watersheds of the Counties of Alameda, Santa Clara, and San Mateo, the Cities of Fairfield, Suisun City, and Vallejo, and the Vallejo Sanitation and Flood Control District. Thirteen petitions were timely filed, seeking review of the MS4 Order with the State Water Resources Control Board (State Water Board). These petitions were deemed complete and consolidated for review on March 15, 2016.

State Water Board regulations generally require final disposition on petitions within 270 days of the date a petition is deemed complete (i.e., by December 9, 2016 in this case). The State Water Board, however, needs additional time to review the large number of issues raised in the petition. Furthermore, the State Water Board is currently actively reviewing petitions on the Watershed Management Programs under a municipal storm water permit issued by the Los Angeles Regional Water Quality Control Board and believes that it is appropriate to complete review of that matter prior to addressing the challenges to the San Francisco Bay MS4 Order.

When the State Water Board anticipates completing review of a petition after the 270-day period passes, it may indicate that it will review the matter on its own motion to avoid unnecessary or premature litigation. Once an order is adopted addressing the Watershed Management Programs, the State Water Board will determine whether issuing an order addressing the petitions challenging the San Francisco Bay MS4 Order is appropriate. That determination or issuance of any order that may follow, however, will not occur by December 9, 2016. Therefore, the State Water Board has decided to adopt this order for review of the San Francisco Bay MS4 Order on its own motion.

POLICY ISSUE

Should the State Water Board adopt the proposed order to review the San Francisco Bay MS4 Order on its own motion?

FISCAL IMPACT

None.

REGIONAL BOARD IMPACT

If the proposed order is not adopted, the San Francisco Water Board would be subject to potential litigation on the adoption of the San Francisco Bay MS4 Order. Adoption of the proposed order delays the prospect of litigation until the State Water Board adopts an order on the merits if it determines such an order is appropriate.

STAFF RECOMMENDATION

Adopt the proposed order.

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD
ORDER WQ 2016-

CITY OF ALAMEDA; CITY OF UNION CITY; SANTA CLARA VALLEY URBAN RUNOFF POLLUTION PREVENTION PROGRAM AND SAN MATEO COUNTYWIDE WATER POLLUTION PREVENTION PROGRAM; CITY OF ALBANY; CITY OF NEWARK; CITY OF HAYWARD; CITY OF SAN JOSE; CITY OF DUBLIN; CITY OF BERKELEY; CITY OF SAN LEANDRO; COUNTY OF ALAMEDA; SAN FRANCISCO BAYKEEPER; AND CITY OF OAKLAND.

For Review of
Waste Discharge Requirements Order No. R2-2015-0049, Municipal Regional Stormwater NPDES Permit for Municipalities within the Counties of Alameda, Contra Costa, Santa Clara, and San Mateo, the Cities of Fairfield, Suisun City and Vallejo, and Vallejo Sanitation and Flood Control District

Issued by the
San Francisco Bay Regional Water Quality Control Board

SWRCB/OCC FILE A-2455(a) through (m)

BY THE BOARD:

On May 19, 2015, the San Francisco Bay Regional Water Quality Control Board (San Francisco Bay Water Board) adopted Waste Discharge Requirements Order No. R2-2015-0049 (San Francisco Bay MS4 Order) regulating municipal separate storm sewer systems (MS4) discharges within the watersheds of the San Francisco Bay region. The fourteen petitioners listed above timely filed a total of thirteen petitions seeking review of the San Francisco Bay MS4 Order with the State Water Resources Control Board (State Water Board). These petitions were deemed complete and consolidated for review on March 15, 2016.¹

State Water Board regulations generally require final disposition on petitions within 270 days of the date a petition is deemed complete (i.e., by December 9, 2016 in this case).² The State Water Board, however, needs additional time to review the large number of issues raised in the petition. Furthermore, the State Water Board is currently actively reviewing petitions on the Watershed

¹ Cal. Code Regs., tit. 23, § 2054.

² Cal. Code Regs., tit. 23, § 2050.5, subd. (a).

Management Programs under an MS4 permit issued by the Los Angeles Regional Water Quality Control Board and believes that it is appropriate to complete review of that matter prior to addressing the challenges to the San Francisco Bay MS4 Order.

When the State Water Board anticipates completing review of a petition after the 270-day period passes, it may indicate that it will review the matter on its own motion to avoid unnecessary or premature litigation. Once an order is adopted addressing the Watershed Management Programs, the State Water Board will determine whether issuing an order addressing the petitions challenging the San Francisco Bay MS4 Order is appropriate. That determination or issuance of any order that may follow, however, will not occur by December 9, 2016. Therefore, the State Water Board has decided to adopt this order for review of the San Francisco Bay MS4 Order on its own motion.³

ORDER

IT IS HEREBY ORDERED that the State Water Board will review Order R9-2015-0049 on its own motion.

CERTIFICATION

The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on December 6, 2016.

AYE:

NO:

ABSENT:

ABSTAIN:

DRAFT

Jeanine Townsend
Clerk to the Board

³ See Wat. Code, § 13320, subd. (a); Cal. Code Regs., tit. 23, § 2050.5, subd. (c).