

STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL
BOARD SAN FRANCISCO BAY REGION

STAFF SUMMARY REPORT (Derek Beauduy)
MEETING DATE: June 10, 2020

ITEM: 7

SUBJECT: **Municipal Regional Stormwater NPDES Permit, Lessons Learned and Reissuance Issues – Information Item**

CHRONOLOGY: November 19, 2015 - Permit reissued

DISCUSSION: This report summarizes key issues that Water Board staff and the Permittees covered by the Municipal Regional Stormwater NPDES Permit (MRP) are working toward resolution on prior to the planned reissuance of the MRP in 2021. The MRP covers 79 Permittees in Alameda, Contra Costa, Santa Clara, and San Mateo counties, and the cities of Fairfield, Suisun City, and Vallejo in Solano County. In addition, the City of Petaluma in Sonoma County is expected to be covered under the reissued MRP.

We have worked with the Permittees and other stakeholders, starting in October 2018, to identify desired changes to MRP provisions. This ongoing collaboration has included regular steering committee meetings with a broad cross section of Permittees and U.S. EPA staff; meetings with groups of Permittees, including meetings with the Bay Area Stormwater Management Agencies Association (BASMAA) Board of Directors; provision-specific workgroup meetings with Permittees; and meetings with other stakeholders, including environmental groups and industry representatives.

This collaborative process is now incorporating discussions around the impacts of the COVID-19 pandemic, which is resulting in significant fiscal uncertainty for Bay Area governments. We are working to understand how the disruption may affect Permittees' ability to meet certain MRP requirements and to identify areas where it may be appropriate to incorporate flexibility while maintaining the MRP's environmental protection outcomes. The pandemic may also result in federal government support for infrastructure spending, which could create an opportunity for Permittees to fund elements of the MRP, such as green infrastructure and trash controls.

MRP provisions that will likely have the most significant changes in the reissued permit are: New Development and Redevelopment (Provision C.3), Water Quality Monitoring (Provision C.8), Trash Load Reduction (Provision C.10), and Mercury and PCBs Controls (Provision C.11 and C.12). We will also include or update requirements implementing the Petaluma River

bacteria TMDL, San Francisco Bay Beaches bacteria TMDL, Pescadero/Butano Creeks sediment TMDL, addressing discharges associated with homelessness, and clarifying approaches regarding discharges of pollutants associated with emergency firefighting activities (e.g., chlorinated water and firefighting foams). This information item focuses on expected changes to provisions for: trash load reduction; mercury and PCBs controls; new and redevelopment; and discharges associated with homelessness.

The current MRP sets a goal of 100 percent trash load reduction or no adverse impact to receiving waters from trash by July 1, 2022. Interim benchmarks of 70 percent by July 1, 2017, and 80 percent by July 1, 2019, were met by nearly all Permittees, as described in the December 2019 information item on [Permittee Compliance with the 80 Percent Trash Load Reduction Requirement](#). For the reissued MRP, we are evaluating extending the compliance date for 100 percent reduction or no adverse impact from the current 2022 goal to a date near the end of the five year permit term and adding an interim benchmark, e.g., 90 percent trash load reduction by July 1, 2022. The extension would recognize the economic challenges associated with the pandemic as well as the challenges of controlling trash from the remaining uncontrolled areas. Many Permittees have appropriately prioritized controlling trash from the highest trash generating areas in early program stages and are now left with a relatively larger area of moderate-level significant trash generating areas from which trash must be controlled.

The MRP now allows Permittees to include, as part of their percent trash load reduction compliance accounting, a reduction credit for implementing source control measures, like single-use plastic bag bans. It also allows load reduction offsets for cleanup of trash that is already in or immediately adjacent to receiving waters, such as creek and shoreline cleanups and implementation of direct discharge programs to control discharges of trash from dumping and associated with homelessness. Those credits and offsets recognize the water quality benefits of the associated work, and currently can be a substitute for completing control actions to prevent the discharge of trash through the storm drain. Cumulatively, the credits and offsets can account for up to 35 percent of the required reduction. As the reduction requirements reach the no-adverse effect finish line, we are evaluating modifications to limit allowed credits and offsets consistent with expectations that discharges of trash through the storm drain be fully controlled, with flexibility for Permittees who may require additional time to continue receiving credit for significant actions.

The MRP mercury and PCBs provisions implement the urban runoff wasteload allocations and associated requirements from the mercury and PCBs TMDLs for San Francisco Bay. Attainment of the mercury TMDL requires a 30 percent mercury load reduction from urban runoff to be achieved by 2028, 20 years after the TMDL's adoption. Attainment of the PCBs TMDL wasteload allocations for urban runoff requires a 90 percent

reduction in PCBs loading from urban runoff by 2030, to 2 kg/yr from 20 kg/yr. Mercury and PCBs provisions in the first two MRP terms were designed according to a phased implementation approach established with the TMDLs whereby control measures were pilot tested in MRP 1.0, and MRP 2.0 required focused implementation of control measures, including a 3 kg/yr PCBs load reduction.

The next MRP requirements will likely include continued and expanded focused implementation of control measures for PCBs, particularly in drainage areas with high levels of PCBs, such as old industrial areas. These would include the continued identification and remediation of contaminated source properties, management of PCBs in building demolition debris and bridge and roadway caulk, management of PCBs in electrical equipment and spills, green stormwater infrastructure implementation, and a variety of treatment control measures. We are evaluating anticipated load reductions consistent with an expected implementation intensity of these control measures, which would be stipulated in the reissued MRP. We are also identifying trackable metrics to be reported consistent with the stipulated load reductions.

Mercury is more evenly distributed throughout urban areas, partially because of significant atmospheric deposition to watersheds. Accordingly, the best way to achieve mercury load reductions will be through implementation of green stormwater infrastructure, which will take many years, and through continued collection and management of mercury-containing waste materials like fluorescent bulbs, thermometers, thermostats, and batteries.

The MRP includes requirements to implement treatment controls for specified new and redevelopment projects. These include implementing low impact development (LID) requirements for projects that create or replace 10,000 square feet of impervious surface, reducing runoff from impervious surfaces, treating runoff to remove urban pollutants using vegetated controls like rain gardens, and controlling adverse changes in the runoff hydrograph. In addition, in lieu of a requirement during the current permit term to implement that approach on a broader range of projects and projects with smaller impervious area footprint, the MRP required Permittees to develop Green Infrastructure Plans (GI Plans). The GI Plan work was intended to help the Permittees develop and coordinate internal capacity to complete multi-benefit green infrastructure projects on a scale broader than just currently regulated projects. Permittees generally completed plans which show substantial effort around policy and coordination, but they include limited commitment to implement green infrastructure beyond the projects already required to be regulated by the MRP.

We are working with the Permittees to consider revisions to the new and redevelopment requirements. Revisions under consideration include

expanding the number of projects required to implement the LID approach and green infrastructure treatment. Changes could include reducing the impervious surface threshold triggering those requirements to 5,000 square feet (which would be consistent with other municipal stormwater permits in the State); incorporating more-specific requirements for single-family homes, which are currently subject to only broad qualitative expectations around site design; and identifying significant street and road projects for which green infrastructure retrofit may be a required component. In addition, we expect to incorporate a process for Permittees to develop a detailed alternative compliance program. The program would enable Permittees to coordinate funding from small and other projects where green infrastructure designs are challenging to complete and instead do more-effective, multi-benefit local or regional projects. Finally, recognizing the role green infrastructure retrofit must play to help achieve urban runoff wasteload allocations for mercury and PCBs, while not biasing implementation of green infrastructure to just mercury and PCBs load reductions, we are considering alternative metrics for minimum expectations for implementation of green infrastructure in the next permit term. An example alternative metric is drainage area managed with green infrastructure. Our evaluation of these changes includes potential clean water and other benefits, the GI Plan frameworks established by the Permittees, and potential municipal funding constraints.

Discharges associated with homelessness, including discharges of human waste and trash, are a growing regionwide issue. MRP Permittees and interested stakeholders are sharing information and lessons learned in addressing homelessness and associated discharges in a workgroup. Potential expectations of Permittees under the reissued MRP are under discussion, and may include: evaluating the scope of the issue via existing censuses and understanding of population locations and water-quality related needs; implementing practices to reduce problematic discharges, such as providing sanitary services (clean water and sewage disposal) and trash collection services for identified populations; implementing clean urban surfaces practices for cleanup of human waste on the ground; and participating in regional coordination efforts to share information and improve existing practices. Recognizing that key drivers of the Bay Area homelessness crisis include the high cost of living and a lack of affordable housing, we are also discussing opportunities to recognize water quality needs in broader regional discussions.

Our current plan is to prepare a tentative order to reissue the MRP for public review and comment by the end of 2020 or early 2021. We anticipate one or more Board hearings leading to Board consideration of MRP reissuance by June 2021.

**RECOMMEN-
DATION:**

No action needed; information item.