

**CITY OF ALBANY
CITY COUNCIL AGENDA
STAFF REPORT**

Agenda Date: November 16, 2009

Reviewed by: BP

SUBJECT: Request to file a Petition for Review of San Francisco Bay Regional Water Quality Control Board's Approval of Order R2-2009-0074 (Municipal Regional Permit for Stormwater) to the State Water Resources Control Board

REPORT BY: Nicole Almaguer, Environmental Specialist

STAFF RECOMMENDATION

That the City Council authorize filing a Petition for Review of the Municipal Regional (Stormwater) Permit to the California State Water Resources Control Board, held in abeyance pending the Regional Water Quality Control Board agree to further negotiate the terms of the permit.

BACKGROUND

In 1991 the City joined with the other jurisdictions within Alameda County to form the Alameda Countywide Clean Water Program (ACCWP). The ACCWP was developed in response to the National Pollutant Discharge Elimination System (NPDES) permit issued by the Regional Water Quality Control Board (RWQCB). The NPDES permit requires all jurisdictions to minimize discharge of pollutants in stormwater to the maximum extent practicable. The City has developed a comprehensive stormwater pollution prevention program that includes municipal maintenance, facility inspections, public outreach and educational events, and frequently exceeds permit requirements in an effort to improve local water quality.

DISCUSSION

In 2007 the RWQCB began developing a Municipal Regional Permit (MRP), intended to regulate the entire San Francisco Bay region within one permit. The MRP covers 76 cities and counties within Alameda, Contra Costa, Santa Clara, San Mateo, and Solano Counties.

The MRP was adopted by the RWQCB at its meeting of October 14, 2009, with an effective date of December 1, 2009. The permit has potentially serious impacts on local government finances and operations given the number of prescriptive measures included. The permit minimizes the ability of jurisdictions to appropriately customize programs, examples include but are not limited to:

- Stormwater treatment at new/redevelopment sites: must be treated by a limited range of “Low Impact Development” (LID) treatment measures (rainwater harvesting and reuse, infiltration, evapotranspiration, or biotreatment – filtering stormwater through vegetation and soils before discharging to the storm drain system). This requirement reduces flexibility in selecting measures that work for particular development sites, and requires a significant amount of space for these landscape-based treatment options. Additionally, mechanical, vault-based devices that are installed underground, such as in a parking lot area, to treat stormwater runoff from a site will not be allowed. These restrictions impose a significant burden on the ability to select appropriate treatment measures, particularly at sites that are built out, have soil permeability issues and/or have a high groundwater table, which are concerns for the majority of projects within the City.
- Trash capture requirements: instead of allowing municipalities the opportunity to customize a trash management program that best suits the particular relative issues faced, the permit would require installation of mechanical trash capture devices that could prove extremely costly to install and maintain and could potentially impact the flow of stormwater during peak storms. Further, the potential functionality of these devices and amount of trash actually captured is uncertain.

ACCWP representatives met with RWQCB staff on several occasions to discuss the draft MRP and identify mutually agreeable measures, however the adopted MRP contains few revisions to properly address local agency concerns. Additionally, the manner by which the permit was adopted failed to properly address the voluminous written and oral comments provided during public hearings. As such, a number of the permittees are submitting petitions to the State Water Resources Control Board, requesting that the State Board remand the permit back to the Regional Board for further public review, reopen the public hearing process, and allow full evaluation and comment on the revisions to the permit. The petition would be based on both process and content:

- 1) Process: The permit was revised after the public hearings to include new language regarding development and redevelopment without a public comment period. These additions result in entirely new requirements for local government to comply with the permit, which should have been subject to a minimum 30-day public review period, and written comments should have been accepted by the Board staff.
- 2) Content: The permit was amended to include extremely prescriptive language regarding a number of measures including the manner by which municipalities conduct maintenance and manage potential pollutant sources. The permit requires that stormwater runoff be treated by a limited range of Low Impact Development (LID) treatment measures, which reduces flexibility in selecting measures that work for particular development sites.

ANALYSIS

The ACCWP legal counsel has advised that a petition for review may be filed with the State Water Board, with a request that the petition be held in abeyance for up to two years

with appeal rights reserved pending further actions or developments. In this case, the petition would be held in abeyance, pending the opportunity for further negotiation of revisions to the MRP with the RWQCB.

SUSTAINABILITY IMPACT

The City's stormwater pollution prevention program is ongoing in compliance with the RWQCB NPDES permit requirements. Filing a petition for review would not have an impact on the sustainability of the City's progressive programs to minimize stormwater pollution.

FINANCIAL IMPACT

At this point in time there is not a financial impact to filing a petition for review to the State Water Board that is held in abeyance.

Attachments

1. Petition for Review of the Municipal Regional (Stormwater) Permit to the California State Water Resources Control Board