



## STAFF REPORT CITY COUNCIL

**CITY CLERK**  
**File #1000-70**

**DATE:** November 3, 2015

**TO:** Honorable Mayor and City Councilmembers

**FROM:** Christopher L. Foss, City Manager

**SUBJECT:** Municipal Regional Permit 2 Update  
*Prepared by Martha Aja, Associate Planner*

### EXECUTIVE SUMMARY:

The San Francisco Bay Regional Water Quality Control Board (Water Board) issued a permit to the City of Dublin and 75 other Bay Area permittees to discharge stormwater. The current permit, referred to as the Municipal Regional Permit (MRP), expired on December 1, 2014. The Water Board released the tentative order for the second Municipal Regional Permit (MRP 2) on May 11, 2015. This permit will replace the existing first MRP Permit (MRP 1). It is anticipated that the Water Board will adopt the MRP 2 on November 18, 2015. The MRP 2 includes new unfunded mandates other than those already in place.

### FINANCIAL IMPACT:

Implementation of the MRP 2 will result in significant costs, including purchase and installation of full trash capture devices, development of a Green Infrastructure Plan and increased staff time for trash monitoring. Complete cost implications are unknown at this time, but staff anticipates that it would potentially require over \$2.25 million in added infrastructure, staff and consultant costs over the next four fiscal years. On June 16, 2015, the City Council set aside \$2.25 million in General Fund Assigned Reserves for MRP 2 implementation. This funding will be used for the purchase, construction and installation of full trash capture devices in addition to the development of a Green Infrastructure Plan.

### RECOMMENDATION:

Staff recommends that the City Council receive the report on the MRP 2 and select a Councilmember to provide testimony at the November 18, 2015 Water Board hearing.

Submitted By  
Community Development Director

Reviewed By  
Assistant City Manager

## **DESCRIPTION:**

### Background

Stormwater runoff contains many types of pollutants from the urban and industrial landscape. Stormwater runoff or urban runoff does not receive treatment in most cases, and is the single largest source of surface water pollution to Bay Area waters. The federal Clean Water Act was amended in 1987 to address urban stormwater runoff pollution of the nation's waters. In 1990 the US EPA established Phase 1 of the National Pollutant Discharge Elimination System (NPDES) stormwater program. The Phase 1 program for Municipal Separate Storm Sewer System (MS4s) required affected jurisdictions to implement a stormwater management program to control polluted discharges from the MS4.

The Water Board issued county-wide municipal stormwater permits in the early 1990s to Phase 1 operators of MS4s. On October 14, 2009, the Water Board re-issued these county-wide municipal stormwater permits as one Municipal Regional Stormwater NPDES Permit to regulate stormwater discharges from municipalities and local agencies in Alameda, Contra Costa, San Mateo, and Santa Clara counties, and the cities of Fairfield, Suisun City, and Vallejo.

The MRP expired on December 1, 2014. The Water Board released the tentative order for the second MRP or MRP 2 on May 11, 2015. There are several provisions within the MRP 2 that will be difficult for compliance. If a permittee is unable to comply with a provision within the permit, the permittee would be in noncompliance, which could expose an agency to potentially significant fines from the State and third-party lawsuits.

The Water Board held two public workshops on the draft permit (June 10, 2015 and July 8, 2015). City of Dublin staff spoke at both workshops and highlighted City's concerns on several permit requirements, including lack of scientific rigor and analysis on the efficacy of new requirements. The City also submitted a formal comment letter (Attachment 1). The City of Dublin and the majority of permittees subject to the permit have requested revisions to the permit. The permit adoption hearing is currently scheduled for November 18, 2015.

## **ANALYSIS**

The MRP 1 includes a myriad of required activities including, but not limited to, the following: commercial business inspections, construction site inspections, illicit discharge response, public outreach, hot spot clean-ups and trash reduction. The MRP 2 includes additional requirements above and beyond those in the MRP 1. The notable, new unfunded mandates include development and implementation of a Green Infrastructure Plan, implementation of City's Trash Reduction Plan and reduction of pollutants of concern.

### Green Infrastructure Planning & Implementation

The MRP 2 requires permittees to complete and implement a Green Infrastructure Plan to treat stormwater runoff from the City's existing and future roadway infrastructure network using vegetated areas before discharging the water to the City's storm drain system, while also not exceeding the maximum level of pollutants allowed in the water being discharged. Despite repeated requests from City of Dublin staff, the Water Board was unable to produce an example plan that would not only treat the stormwater but also meet the discharge limits. This is a key staff concern since the full cost implications of implementing such a plan are unknown due to the fact that such a plan has not been developed elsewhere.

In the current MRP, new development projects and new street construction projects are required to treat stormwater runoff on-site using vegetated areas, but there is no requirement to treat water when the City conducts street maintenance activities, such as pavement rehabilitation. One of staff's concerns with retrofitting existing roadways to incorporate green infrastructure-type vegetated stormwater treatment areas is the limited amount of right-of-way typically available. The need for additional right-of-way to construct green infrastructure improvements will create significant financial burdens on future roadway maintenance projects and limit the ability to incorporate other roadway improvements such as parking and bike lanes.

The green infrastructure requirements will require staff and consultant resources to develop and implement such a plan. The tentative order requires all permittees to develop a framework for development of its Green Infrastructure Plan by June 30, 2017. Among other things, the framework needs to include the following items:

1. A mechanism to prioritize and map areas for potential projects and planned projects;
2. Targets for the amount of impervious surfaces within the City to be retrofitted;
3. Standard specifications and typical design details necessary to incorporate green infrastructure in projects; and
4. A process for tracking and mapping completed projects.

It is anticipated that the development of the Green Infrastructure Plan will cost approximately \$150,000-\$200,000. There may be an opportunity for some collaboration and cost sharing among the Alameda County jurisdictions, which could potentially decrease the estimated cost associated with the development of the plan. The City will also need to periodically review and update the Green Infrastructure Plan.

Additionally, there will be cost implications to treat the public stormwater runoff using green infrastructure. The City will incur increased costs for the construction of green infrastructure. There is no funding source for green infrastructure projects. Transportation funding is extremely limited in what it can be used for; therefore, the City will need to identify an additional funding source for the construction of green infrastructure projects.

The City of Union City recently completed a green streets project that is three city blocks long. The construction cost of the project was \$1,000,000. The total project cost (including design, construction and inspections) was over \$1.25 million, or a little over \$400,000 a block.

There may also be some land use implications that will result from green infrastructure projects. It is very likely that private property will drain into the green infrastructure that the City constructs within the public right-of-way. Identifying the best locations to site green infrastructure will require a significant amount of coordination between City departments and private property owners.

### Trash Reduction

Trash reduction requirements within the MRP 2 requires permittees to reduce trash discharges to receiving waters by 70% by July 1, 2017 and 80% by July 1, 2019.

The City will have to install full trash capture devices in developed portions of the City (i.e. downtown area, Sierra Court, Scarlett Drive, etc.) to meet the trash reduction requirements in the MRP 2. There are several areas in the downtown area that are not treated by full trash capture devices, including several areas in-between Amador Plaza Road and San Ramon

Road. Full trash capture devices require financial resources to pay for the upfront cost of the device in addition to the long-term maintenance of the device. Each large full trash capture device costs approximately \$400,000 (includes the cost of the device and the design & construction costs). The City currently has a capital improvement project in the budget and has allocated \$400,000 for the installation of a full trash capture device in the downtown area. An additional \$2.25 million in General Fund reserves, set aside by the City Council in September 2015, will enable the City to achieve the required 70% and 80% trash reduction requirements.

As of July 1, 2015, the estimated trash reduction in Dublin is 60%; of which 55% is attributable to the installation of full trash capture devices. There are a total of 503 public and private full trash capture devices installed within the City of Dublin. The full trash capture devices installed within the City treat a combined 707 acres. The remainder of the estimated trash reduction (5%) is from jurisdictional wide measures (Single-Use Bag Ban Ordinance and partial polystyrene ban).

Permittees have requested several changes to the trash control requirements, including, increased reduction credit for source control (e.g. product bans), on-land and creek clean-ups and public outreach. Additionally, permittees have requested that compliance be by implementation of trash control actions and not by visual assessments.

#### Visual Assessments

The alternative to installing full trash capture devices is to implement other reduction measures and then conduct visual assessments to demonstrate that the reduction measures are effective in reducing trash. Compliance through visual assessments is subjective and potentially infeasible due to the variable nature of trash generation. The MRP 2 requires visual assessments to be done covering ten percent (10%) of a jurisdiction's trash management areas. Water Board staff was unable to provide a scientific rationale for quantification of trash control using visual assessment despite repeated requests.

This requirement is burdensome and would result in additional staff time. The City's approach has favored the installation of full trash capture devices over other control measures because there is not adequate staffing to conduct the required visual assessments.

#### Pollutants of Concern

The MRP 2 includes numeric reduction requirements for pollutants of concern, most notably Polychlorinated Biphenyl (PCBs). PCBs were domestically manufactured from 1929 until their manufacture was banned in 1979. They have a range of toxicity and vary in consistency from thin, light-colored liquids to yellow or black waxy solids. Due to their non-flammability, chemical stability, high boiling point, and electrical insulating properties, PCBs were used in hundreds of industrial and commercial applications including electrical, heat transfer, and hydraulic equipment; as plasticizers in paints, plastics, and rubber products; in pigments, dyes, and carbonless copy paper; and many other industrial applications.

The permit mandates a three kg reduction in the discharge of PCBs. Of this amount, two kg is attributed to managing PCB waste during building demolition. PCBs are widely distributed in the environment. The management of PCBs during building demolition will be very complicated and potentially very expensive. Such a program has not been implemented anywhere in the country. Of greatest concern to the permittees is that there is no science that demonstrates a connection between building demolition and PCBs in stormwater runoff. This data gap was confirmed by Water Board staff at a recent "PCB in Building Demolition Workshop."

Member agencies may not be able to document the mandated PCB reductions. To address this concern, permittees have requested that the numeric limits be changed to action levels. If the actions taken do not achieve the anticipated load reduction, municipalities can try additional actions or new actions without the threat of noncompliance.

#### Issue of Compliance

The most important unresolved issue relates to how Water Board staff will determine compliance. Noncompliance carries the possibility of significant fines. Under the Clean Water Act, third parties can sue noncompliant permittees. It is essential to our interest as a permittee that if we diligently pursue actions specified in the permit, we will be found to be in compliance. Water Board staff believes that the permit should hold permittees legally responsible for achieving specified reductions in stormwater pollutants discharged into waterways, on a stated schedule. At the same time, Water Board staff acknowledges that many of those reductions may not be achievable. This is a big concern for staff that Water Board is knowingly creating a mandate with full knowledge that many permittees will fail to achieve the mandated requirements.

#### MRP 2 Adoption Hearing

At the November 18 hearing, the Water Board will consider the revised tentative order along with a change sheet that will include any changes made to the permit at the hearing. Upon conclusion of the public hearing, actions that the Water Board could pursue include delaying action, adopting the tentative order as presented or adopting the tentative order with changes made at the hearing. Past history suggests that it is unusual for the Board to agree to changes at the hearing.

The County stormwater programs, including Alameda, Contra Costa, San Mateo and Santa Clara, are seeking support from elected officials to influence the action taken at the Water Board hearing. City staff recommends that a Dublin Councilmember speak at the November 18 adoption hearing. City staff will also attend the hearing and will develop the talking points. Speakers are generally allotted three minutes each.

#### **NOTICING REQUIREMENTS/PUBLIC OUTREACH:**

Not Required.

**ATTACHMENTS:**

1. City of Dublin Comment Letter (dated June 29, 2015) response letter to MRP changes

June 29, 2015

Transmitted via email: [mep.reissuance@waterboards.ca.gov](mailto:mep.reissuance@waterboards.ca.gov)

**Subject: City of Dublin Comments – MRP 2.0**

Dear Dr. Mumley:

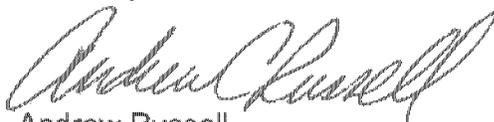
By email dated May 11, 2015, the tentative order for the SF Bay Regional Municipal Regional Stormwater Permit (MRP) was released. Notice was given that the deadline for receipt of written comments on the Draft MRP is 5:00 pm on Friday, July 10, 2015.

In response to the Water Board notice, I am filing the attached written comments on behalf of the City of Dublin. Thank you for the opportunity to file these comments. We appreciate the time that you and your staff have taken to meet with the permittees in an attempt to reach agreement on the next phase of the MRP.

The attached table outlines the City of Dublin's concerns with the draft tentative order.

Do not hesitate to contact me with any questions at 925-833-6630.

Sincerely,



Andrew Russell  
Assistant Public Works Director/City Engineer

Attachments: Table of Specific Comments



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Dublin, California 94568  
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- City Council**  
(925) 833-6650
- City Manager**  
(925) 833-6650
- Community Development**  
(925) 833-6610
- Economic Development**  
(925) 833-6650
- Finance/Admin Services**  
(925) 833-6640
- Fire Prevention**  
(925) 833-6606
- Human Resources**  
(925) 833-6605
- Parks & Community Services**  
(925) 556-4500
- Police**  
(925) 833-6670
- Public Works/Engineering**  
(925) 833-6630



Attachment to City of Dublin  
Comments on Draft MRP 2  
June 29, 2015

Provision	Issue	Suggested Revision
C.3.e.v: Reporting on Special Projects	The purpose of the Special Projects provisions, per the language in the permit, is to incentivize projects that are beneficial at a watershed scale. Requiring Special Projects to first demonstrate LID infeasibility does little to incentivize these projects. Furthermore, requiring Special Projects to demonstrate infeasibility for <u>off-site</u> LID treatment is vague and unnecessarily difficult.	Remove the Special Projects reporting requirements.
C.3.b.ii(1)(iv): Stand-alone parking lots	As written, it is unclear if a project which otherwise would not qualify as a Regulated Project includes a parking lot that replaces/creates more than 5,000 SF of parking lot, is just the parking lot surface created/replaced subject to C.3.c and C.3.d requirements or would the entire project site would be considered subject to C.3.c and C.3.d requirements.	Revise to specify that only the impervious surface area(s) of uncovered parking lot created and/or replaced are subject to the requirements of Provisions C.3.c and C.3.d.
C.3.e.ii(3)(a)(iv) and C.3.e.ii(4)(a)(iv) C.3.e.ii(5)(e)(i)b: Incidental parking	Special projects should be allowed to also include minimal incidental surface parking for commercial uses if the project is a mixed use project (i.e. residential with ground floor retail).	Revise to allow incidental surface parking for commercial uses (applicable for mixed-use projects - residential with ground floor retail).
C.3.j: Green Infrastructure	There is a lack of direction and information for development of a Green Infrastructure Plan. There are no guidelines or reference plans that we can use to develop our own plan. We are concerned that we will expend our limited resources on the development of such a plan, which will then be rejected by Water Board Staff as being inadequate.	Provide a single plan example that meets Board's requirements. Or give specific direction on the development of the Green Infrastructure Plan. It is a common practice that the scientific research is conducted in advance of a regulation to ensure the efficacy of the law. In this case there is no such scientific backup.
C.3.j: Green Infrastructure	We are not convinced of the water quality benefits that will be achieved from the Green Infrastructure Plan and the construction of Green Infrastructure projects. The cost/benefits ratio for some Green Infrastructure projects will be too high to justify project planning, development and construction.	Provide scientifically sound information (data) that demonstrates the water quality benefits that will be achieved from the Green Infrastructure projects.

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Comments on Draft MRP 2  
June 29, 2015

C.3.j: Green Infrastructure	Green Infrastructure projects, particularly those incorporated into roadway projects, will often times be unable to meet the C.3.d sizing criteria. Greater flexibility is needed.	Revise to allow Permittees to propose an approach to dealing with project constraints at the Permittee or countywide program level. Add alternative compliance and allow the treatment facility to be located outside the watershed.
C.3.j.i(1): Green Infrastructure Framework	The time to develop a framework for a Green Infrastructure Plan is infeasible. Twelve months is not enough time to develop the framework and have it approved by the City Council. While the permit does allow for a City Manager to approve the Green Infrastructure framework, such a plan would have to be approved by the City Council given the cost implications of the plan.	Revise to give more permittees more time to develop a framework.
C.5.e: Mobile Businesses	The provision contains very specific requirements that may turn out not to be the most effective approach.	A proposed alternative approach that allows greater flexibility while still ensuring that the problem will be addressed will be submitted through BASMAA.
C.6.ii.e.ii(2)(b): Inspection of hillside projects	<p>Not all Permittees have such hillside development areas defined. The new requirement raises several questions concerns:</p> <ul style="list-style-type: none"> <li>• Is this the pre-existing slope or the post-construction slope?</li> <li>• Is this the average slope across the entire project site? What is the definition of "slope" as it applies to this requirement? How is "slope" measured?</li> <li>• If any portion (regardless of the net amount) of the site exceeds the minimum slope threshold does this trigger the requirement for monthly inspections of the entire site (i.e. say 100 SF of a 0.9 acre site is considered "hillside")?</li> </ul>	The default definition for "hillside" development should be revisited and further discussed prior to implementation. Also, a minimum disturbed surface should be included in the definition of "project."
C.7.a.i & C.7.a.ii: Storm Drain Signage	These provisions would be more appropriate in other sections of the Permit.	Move the marking of municipally maintained inlets requirement to Provision C.2 and move the marking of privately maintained inlets to Provision C.3.

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Comments on Draft MRP 2  
June 29, 2015

C.9.a.iii(2): Reporting on IPM strategies	Alternative language preferred.	Revise from "Permittees shall provide a description of two IPM actions implemented in the reporting year" to "Permittees shall provide a description of any new IPM actions implemented in the reporting year."
C.9.d: Interface with County Agricultural Commissioners	The language in the current permit is adequate. Not all permittees will need to communicate with the county agricultural commissioners.	Revise to state that permittees shall describe any communications that they have with the County agricultural commissioners.
C.10.a.ii.b: Parcels plumbed directly to storm drain system	The requirement for cities to map all land greater than 5,000 square feet that are plumbed directly to the storm drain system by 2018 is burdensome and will not provide any water quality benefits.	Remove this requirement from the permit.
C.10.b.ii.b(ii): Non-FTC Assessment	Draft permit requires visual assessment covering 10% of a jurisdictions management areas. This is an unduly burdensome requirement, especially for large jurisdictions, and no rationale for this high rate of assessment is provided.	Decrease the minimum required area.
C.10.b.iii.iv: Source Control	Source control is an important strategy in reducing trash. A five percent load reduction for all source control actions is not adequate and does not incentivize cities to implement source control measures.	Increase the percent load reduction for source control to 15%. In addition, cities should be able to claim a percent load reduction for outreach efforts. Outreach efforts are the only strategy that changes people's behavior.
C.10.b.iii.v: Receiving Water Observations	The amount of trash within receiving waters is not necessarily an indication that the on-land control measures are effective or ineffective. Trash within the receiving water is extremely variable and can include trash that doesn't originate from the MS4, such as trash from homeless encampments & wind-blown trash.	We recommend that this requirement be removed or delayed until a regional study has been done that provides a quantifiable link between the trash within the MS4 & receiving waters.
C.11.c: Plan and Implement Green Infrastructure to reduce PCB	Provision C.11.c incorrectly assumes that mercury reduction concerns can drive the decisions of where initial Green Infrastructure projects are constructed.	Remove C.11.c from the Permit. The Green Infrastructure plans should not be tied to TMDLs.

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<p>C.12.a.ii(4): PCB load default approach</p>	<p>The approach to assign specific load fractions for PCBs based on county population in each city is flawed. The City of Dublin has a relatively high population; however, we have very little old industrial and old urban areas. The majority of development in Dublin occurred in the past 10-15 years. Using the default approach would result in Dublin's requirement being high despite the fact that we have almost no sources of PCBs.</p>	<p>Remove the default approach from the permit.</p>
<p>C.12.c: Plan and Implement Green Infrastructure to reduce PCB Loads</p>	<p>Provision C.12.c incorrectly assumes that PCB reduction concerns can drive the decisions of where initial Green Infrastructure projects are constructed.</p>	<p>Remove C.12.c from the Permit. The Green Infrastructure plans should not be tied to TMDLs.</p>
<p>C.12.f: Manage PCB-Containing Materials and Wastes during Building Demolition and Renovation Activities</p>	<p>A framework for managing PCB containing materials and wastes during building demolition activities is something that should be developed at the state level, similar to asbestos abatement or lead based paint.</p>	<p>Remove this requirement from the permit.</p>
<p>Annual Reporting</p>	<p>Annual Reporting is extremely time consuming now and would be even more onerous if we were required to report on two separate permits.</p>	<p>Regardless of when the MRP 2.0 is adopted, the City requests that the annual reporting requirement not be split between two different permits.</p>