

**2015 Municipal Regional Permit
Report to the Transportation, Water, and Infrastructure Committee
June 9, 2016**

Introduction

This report to the Transportation Water and Infrastructure Committee explores the policy and financial implications of implementing the recently adopted Municipal Regional Permit (MRP).

Background. The San Francisco Bay and Central Valley Regional Water Quality Control Boards issue the County a stormwater permit on a five-year permit cycle to improve water quality. The permit applies jointly to the County, all 19 cities, and the Flood Control and Water Conservation District, and is administered overall by the Contra Costa Clean Water Program. In addition to the countywide responsibilities of the Clean Water Program, each city has a local program that is responsible for meeting permit compliance within their city. Similarly, the County is responsible for permit compliance in the 17 unincorporated communities spread throughout the County, making the County's implementation much more complicated. The first stormwater permit was issued in 1993 and required the County to prepare its own Stormwater Management Plan, allowing the County to establish its own annual goals and activities, within a specified framework, to meet water quality objectives. In 2003 the permit was amended to include stormwater treatment requirements for new development. These development requirements came to be known as Low Impact Development (LID) and were primarily landscaped-based design elements such as grassy swales and infiltration planter boxes. At about this same time the Regional Board changed their permit requirements from a permissive approach, where the County was allowed to write its own Stormwater Management Plan, to a more prescriptive approach, where specific activities with measurable results were required.

Anticipating the need to fund requirements of a new stormwater permit, the County legislatively modified its Flood Control District Act in 1993 to allow the Flood Control District to assess a Stormwater Utility Assessment on each parcel in the County. The assessments were originally established as a range that was estimated for each city and the County. The County's assessment ranged from \$16-\$30 per parcel per year in unincorporated areas. When it was first implemented in 1993 each city and county assessment started at the lowest assessment in their assessment range. Each spring the cities and County send a resolution to the Flood Control District indicating their assessment for the next fiscal year. As each subsequent stormwater permit was issued and costs escalated, the assessments started increasing. About 10 years ago all city and County assessments had reached the top of their range. The Flood Control District collects all of the stormwater utility assessments and distributes the revenue to each of the cities and the County, based on the parcels assessed in each jurisdiction.

First Municipal Regional Permit. In 2009 the Regional Board issued the first regionally uniform stormwater permit to all urbanized (Phase 1) counties in the Bay Area, calling it the Municipal Regional Permit. This permit was more ambitious than prior stormwater permits, as it was fully prescriptive, included pollutant load reduction plans (TMDLs) for Mercury and PCBs, and tested the feasibility of treating stormwater at sewer treatment plants prior to discharge into the Bay. In addition, the permit defined trash as a pollutant and included a provision to totally remove trash from the County's waterways within 10 years. The specified targets were 40% trash removal by 2014, 70% removal by 2017, and 100% by 2022. Naturally, the cost of compliance for this permit was much higher than the previous permits.

New Municipal Regional Permit. In November, 2015, the Regional Board adopted a new Municipal Regional Permit, referred to as MRP 2.0, that built upon the requirements of the first Municipal Regional Permit (MRP 1.0). The trash removal requirements were modified and strengthened to reflect application issues identified while implementing MRP 1.0. For example, more intermediate target requirements were added (60% and 80% removal targets) to facilitate implementation monitoring. The trash permit provision has become the single most expensive requirement to comply with, as the costs increase radically with each target. At this point, nobody really knows what type of infrastructure, outreach programs, land-use requirements, and perhaps other strategies, will be needed to meet 100% trash removal. PCB and Mercury removal requirements have been ratcheted up also, requiring a specific amount removed from watersheds each year to meet the goal of 90% removal in 20 years for PCBs and 50% removal in 20 years for Mercury.

Lastly, there is a requirement to implement Green Infrastructure, initially in public spaces, to treat stormwater and allow it to infiltrate into the ground. In concept, the objective of Green Infrastructure is to reconstruct the built environment, or engineer new construction, so that every drop of stormwater that traverses a paved or impervious surface is intercepted and treated before discharging into a waterway. MRP 2.0 requires the County to develop a Green Infrastructure Plan, essentially a high level planning document that inventories opportunity areas on public property, such as parking lots and road rights-of-way, establishes criteria and a methodology for prioritizing the opportunity areas, and produces a prioritized list of Green Infrastructure projects. The County is also required to implement several Green Infrastructure projects during the permit term. Since MRP 2.0 builds upon the requirements of MRP 1.0, the compliance costs are the same as MRP 1.0, plus all the added "enhancements" noted above.

Policy Implications

The following are some of the policy implications with implementing the new MRP 2.0 stormwater permit:

- **Building Stormwater Infrastructure Systems.** The first stormwater permits relied heavily on public education to effectuate behavior change and reduce pollution. There were also many required studies to gather data that would inform later decisions on the best way to improve water quality. These and similar requirements were indicative of a nascent program. However, the program has since matured and the Regional Board believes the only way to remove pollutants from stormwater is through physical treatment, which requires investment in treatment infrastructure. With this permit the County will embark upon the construction of a stormwater treatment system that will ultimately be comparable to, though operationally different from, the water and sewer systems that currently serve our County.
- **Increased Maintenance.** Commensurate with the construction of new stormwater infrastructure is the responsibility to operate and maintain that infrastructure. The costs for operating and maintaining this new infrastructure will be above and beyond the current budget for maintaining our public works infrastructure. These infrastructure programs include roads, drainage, buildings, flood control, parks, and airports. The budget for each of these infrastructure programs is currently constrained and any reduction to accommodate maintenance of stormwater facilities will negatively impact service levels.
- **Integration of Green Infrastructure.** To achieve the requirements of MRP 2.0, the County will need to fully integrate the concept of Green Infrastructure in to all of its capital programs, such as buildings, parking lots, roads, parks, flood control, and airports.
- **Involvement of Multiple County Departments.** Traditionally, County departments have viewed the stormwater permit as primarily a Public Works Department program, although some other departments have been involved, particularly Health Services and the Department of Conservation and Development. Even so, these other departments viewed Public Works as the responsible agency. In fact the permit is a County permit, not a Public Works permit, and the responsibility of all applicable departments to implement. The reality of this is more obvious with MRP 2.0.
- **Rebuilding of the Built Environment.** The Green Infrastructure requirements of MRP 2.0 and future permits will likely exceed the capacity of our capital improvement programs to comply. As a result, the County will need to reconstruct existing impervious surfaces to accommodate stormwater treatment, or construct stormwater treatment facilities in underutilized public spaces. For example, County parking lots could be reconfigured and reconstructed to include Green Infrastructure.

Financial Implications

The following are some of the financial implications of implementing the new MRP 2.0 stormwater permit, based on the way programs are currently funded:

- **Reduced Road Funding.** With the requirement to integrate Green Infrastructure into our capital project programs, the County's road rights-of-way will become priority areas. One reason for including Green Infrastructure into road projects and reconstructing roads to include stormwater treatment is that roads produce some of the most polluted runoff. The County's Road Funds are used to pay for road and transportation improvements and maintenance. The new MRP 2.0 requirements will divert Road Funds from current programs to build and maintain Green Infrastructure facilities, reducing investment in our current transportation infrastructure.
- **Reduced Community Drainage Funding.** Community Drainage systems are the pipes and ditches in the County's 17 unincorporated communities that protect property from flooding. For many years now, since the Board transferred maintenance responsibility from the General Fund to the newly created Stormwater Utility Assessment (SUA) in 1993, the Community Drainage program has been funded with SUA funds. Compliance costs are going up and it is likely funding for this program will have to be reduced. This is a serious issue as community drainage infrastructure is getting old and facilities are beginning to fail, such as the sinkhole created by a pipe failure on Hazel Avenue in Kensington, which suggests an increase in funding is needed rather than a decrease.
- **Reduced Flood Protection Services.** The Flood Control District provides flood protection services to many cities and communities in the County. Some of the watersheds have inadequate funding due to low tax rates that were locked in when Proposition 13 was passed in 1978. In these cases the Flood Control District looks to the city being served to help fund flood protection services. For unincorporated communities the Flood Control District turns to the County. Since 1993, the County has been using SUA funds to help pay for flood protection services in the Wildcat, San Pablo, Rheem, Rodeo, and Kellogg Creek watersheds. With compliance costs going up it's likely there will be a reduction in funding for these services. Similar to community drainage, Flood Control District facilities are reaching the end of their service life and a dramatic increase in investment will be required when they begin to fail.
- **Increased County Costs.** MRP 1.0 required activities by other County Departments, such as restaurant inspections performed by Health Services, that were often paid for by Public Works with SUA funds. Right or wrong,

this has fostered the perception by other departments that this is a Public Works permit, not a County permit. MRP 2.0 expands these requirements and some have a more direct impact on other County departments, such as the incorporation of Green Infrastructure into the design of new County facilities.

Consequences of Non-Compliance

The Regional Board must issue the County a stormwater permit as required by and with authority from the Environmental Protection Agency and the federal Clean Water Act. The Regional Board also has authority through State statute that is, in many cases, more stringent than the Clean Water Act. When a permittee is in non-compliance, the Regional Board can issue a Notice of Violation and levy fines of \$37,500 per violation per day through federal authority, and \$10,000 per violation per day through State authority. The largest exposure from non-compliance, however, is from third party lawsuits. If the Regional Board finds the County in non-compliance it is highly likely the County would lose any lawsuit and face a very expensive settlement agreement or court decision.

Next Steps

The following are suggested next steps recommended by staff to fully understand the implications of MRP 2.0 and develop a plan to finance implementation costs:

- **Future Reports.** This report focuses on the policy and financial implications of the recently adopted MRP 2.0 stormwater permit. Staff intends to come back to the Transportation, Water, and Infrastructure Committee with two additional reports; the next report will review the financial issues in more detail and the last report will explore potential options to address the challenges of implementing MRP 2.0.
- **Strategic Plan.** Staff has been working for two months now on developing a Strategic Plan to implement MRP 2.0 in the most cost-effective manner that achieves the overall objective of improving stormwater quality. Elements of the Strategic Plan will manifest itself in the upcoming Financial Report and subsequent Options Report. As we work our way through the implementation issues, with direction from the Committee and the Board, staff will be able to complete the Strategic Plan.
- **Financial Report.** Staff has assembled financial data on activities required by MRP 1.0 and is estimating the costs to implement MRP 2.0. This has been facilitated by a robust work order and program accounting system. When this effort has been completed, staff will be able to bring the Financial Report to the Committee and outline the full fiscal ramifications of implementing MRP

2.0. In 2009, at the beginning of the MRP 1.0 five year permit, there was a surplus of funds in the County's Stormwater Program. In 2015, for the last year of the MRP 1.0 permit, compliance costs exceeded the annual revenue of SUA funds and the surplus was gone. Even without knowing the estimated costs of MRP 2.0, the obvious indication is that there will not be enough SUA funds to meet future permit compliance costs.

- **Options Report.** Once all the financial analysis is done, staff can start putting together options for the Committee and the Board to consider in order to meet MRP 2.0 permit compliance.
- **Feedback.** Staff would appreciate any feedback, thoughts, and comments the Committee can offer on this approach to developing an implementation plan for MRP 2.0, and when to bring this to the full Board.

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