

New Permit Adopted for Stormwater Management

On January 1, a new Municipal Regional Permit for Stormwater became effective, covering 75 Bay Area agencies, including Sunnyvale. This five-year permit is issued by the Regional Water Quality Control Board (Water Board) as directed by the State and the Federal Clean Water Act. The permit directs a broad array of actions to minimize pollution from storm drain systems to local waterways such as creeks, channels, and the Bay.

The permit requires continued efforts as well as new ones to address specific pollutants (such as trash, mercury, PCBs, and pesticides) and to ensure that City services and functions are conducted in a manner that protects local waterways. Continued efforts include:

- Integration of “low impact design” and stormwater treatment features in new and redevelopment projects
- Inspection of businesses for ongoing implementation of best practices to prevent pollution
- Implementation of pollution prevention best management practices when conducting maintenance or repair of roads, landscapes, buildings, and other infrastructure
- Community outreach and engagement to promote adoption of pollution prevention practices

The new Permit also requires expanded or additional activities. These include:

- Green Infrastructure Planning – This entails developing a City-specific plan to identify, prioritize, and track the retrofitting and reconstructing of gray infrastructure and impervious surfaces with green infrastructure on private and public property. The Permit's goals are to capture and use rainwater as a resource and to filter and reduce pollutant loading of PCBs, mercury, litter and other watershed pollutants.
- Trash Reduction – The previous permit prompted the development of Trash Reduction Plans and this permit requires the continued implementation of those plans. During this permit cycle, the reduction targets are more aggressive, requiring a 70 percent reduction by 2017 and 80 percent by 2019, working toward an ultimate target of no adverse impacts from trash to local waterways by 2022.
- PCBs Control Programs – The permit requires new activities to reduce the migration of PCBs to meet specific numeric requirements for reduction. PCBs are no longer in widespread use but are persistent in the environment and difficult to control. They were previously used in industrial applications and are still found particularly in older industrial areas. New required activities include identifying and addressing properties with elevated levels of PCBs, implementing controls on building demolition activities to address the potential release of PCBs from materials such as caulk, and addressing PCBs through long-term implementation of Green Infrastructure.

Staff has been engaged throughout the permit development and adoption process. The Water Board met with a group of permitted agencies over a two-year period to gather input and discuss prospective approaches to stormwater quality protection and permitting. Sunnyvale participated in those efforts. The Water Board released an administrative draft of the permit in February 2015 and a formal draft for public comment in May 2015. Staff analyzed and commented on both of those iterations and provided testimony at Water Board workshops and the public hearing in November.

While the early engagement process afforded staff the opportunity to contribute to shaping the permit's provisions, the final permit includes elements that are highly problematic for local agencies. For many agencies, the concern is significant and several have filed petitions (a kind of "appeal") to the State Water Resources Control Board to review and direct changes to the permit. The Santa Clara Valley Urban Runoff Pollution Prevention Program, of which Sunnyvale is a member agency, filed a petition citing two primary challenges to the permit:

1. Inclusion of "numeric effluent limits" for PCBs program requirements, which marks a sharp turn in stormwater permitting for municipal storm systems away from "action based" approaches that better recognize the inherent difficulties in managing an open system with many inputs (storm drains and open channels) and allow for iterative implementation of programs and actions based on results. Numeric effluent limits bring greater risk of non-compliance, regulatory fines, and threat of third-party litigation.
2. Flaws in the permit adoption process including concerns about whether the process afforded adequate participation by the public and consideration of the full Water Board.

The appeal process is potentially a long one and does not provide interim relief of the permit requirements.

Sunnyvale continues to implement dynamic and integrated programs to protect water quality. Implementation of the permit's provisions is an inter-departmental effort. Environmental Services leads permit compliance coordination, with Community Development and Public Works as primary partners. The permit's requirements phase in over the five-year permit period and staff will be integrating the new requirements into operational and resource plans over the coming year. For more information, contact Elaine Marshall, Environmental Program Manager, at emarshall@sunnyvale.ca.gov.