

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

EXECUTIVE OFFICER SUMMARY REPORT
MEETING DATE: June 13, 2018

ITEM: 8A

SUBJECT: City of Hercules, Municipal Regional NPDES Stormwater Permit, Order No. R2-2015-0049, NPDES Permit No. CAS612008, Permittee, Hercules, Contra Costa County – Adoption of Cease and Desist Order

CHRONOLOGY: November 19, 2015 – Permit reissued
September 29, 2017 – 2016-17 Permit Annual Report received

DISCUSSION: The Water Board adopted the Municipal Regional NPDES Stormwater Permit, Order No. R2-2015-0049 (Permit) on November 19, 2015, issuing waste discharge requirements as NPDES Permit No. CAS612008. Permit Provision C.10.a.i required Permittees to achieve a 70 percent trash load reduction, from a 2009 baseline, by July 1, 2017. Additionally, the provision requires Permittees to achieve an 80 percent trash load reduction by July 1, 2019.

In its Annual Report for fiscal year 2016-17, the City of Hercules reported a trash load reduction of 15 percent. Since this did not meet the required 70 percent reduction, the City is in violation of the Permit.

This Tentative Cease and Desist Order (Order) (Appendix A) would set deadlines for implementation of trash controls that will bring the Permittee into compliance with the 70 percent trash load reduction requirement and to ensure compliance with the 80 percent trash load reduction requirement. The City reached 66 percent trash reduction in late 2017 by installing full trash capture devices (FTCDs) on 100 percent of the City's treatable right of way. The Order would require the Permittee to achieve the 70 percent trash reduction by November 1, 2018, and, subsequently, 80 percent trash reduction by July 1, 2019, as required by the Permit. The City has submitted a plan to achieve this by enforcing an ordinance requiring private property owners to install FTCDs, which will result in a total reduction of 100 percent from the 2009 baseline when fully enforced. This approach is necessary because a large portion of the City's jurisdiction is comprised of large private parking lots that represent a significant potential trash generation area and discharge directly to the storm drain system.

The Prosecution Team received no comments on the Order during the public comment period. The Team has made minor editorial and formatting changes to the Order since its circulation for public comment.

**RECOMMEN-
DATION:** I will have a recommendation at the end of the hearing.

APPENDIX A: Tentative Cease and Desist Order

Appendix A
Tentative Cease and Desist Order

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

CEASE AND DESIST ORDER No. R2-2018-xxxx

CITY OF HERCULES

WHEREAS the California Regional Water Quality Control Board, San Francisco Bay Region (Water Board), finds the following:

Background

1. The Water Board adopted the Municipal Regional NPDES Stormwater Permit, Order No. R2-2015-0049 (Permit) on November 19, 2015, issuing waste discharge requirements as NPDES Permit No. CAS612008. The Permit contains prohibitions, limitations, and provisions regulating the stormwater and non-stormwater discharges from each permittee's municipal separate storm sewer system (MS4).
2. The City of Hercules (Permittee) is permitted under the Permit and, as such, is subject to the Permit's requirements, including Provision C.10, which requires the Permittee to achieve certain reductions in trash discharges through the Permittee's MS4 to receiving waters.
3. Permit Provision C.10 states: "Permittees shall demonstrate compliance with Discharge Prohibition A.1, for trash discharges, Discharge Prohibition A.2, and trash-related Receiving Water Limitations through the timely implementation of control measures and other actions to reduce trash loads from municipal separate storm sewer systems in accordance with the requirements of this provision."
 - a. Discharge Prohibition A.1 states, in part: "The Permittees shall, within their respective jurisdictions, effectively prohibit the discharge of non-stormwater (materials other than stormwater) into storm drain systems and watercourses."
 - b. Discharge Prohibition A.2 states: "It shall be prohibited to discharge rubbish, refuse, bark, sawdust, or other solid wastes into surface waters or at any place where they would contact or where they would be eventually transported to surface waters, including flood plain areas."
 - c. Receiving Water Limitation B.1 states: "The discharge shall not cause the following conditions to create a condition of nuisance or to adversely affect beneficial uses of waters of the State:
 - a. Floating, suspended, or deposited macroscopic particulate matter, or foam;
 - b. Bottom deposits or aquatic growths;
 - c. Alteration of temperature, turbidity, or apparent color beyond present natural background levels;
 - d. Visible, floating, suspended, or deposited oil or other products of petroleum origin;and

4. Permit Provision C.10.a.i states: “Permittees shall reduce trash discharges from 2009 levels, described below, to receiving waters in accordance with the following schedule:
 - a. 70 percent by July 1, 2017; and
 - b. 80 percent by July 1, 2019.”
5. Trash reduction requirements have been included in the Permit since its initial adoption on October 14, 2009, as Order No. R2-2009-0074.
6. On September 29, 2017, the Permittee submitted its Annual Report for fiscal year 2016-2017 (Annual Report), which documented the Permittee’s progress in complying with Permit Provision C.10. The Permittee reported a 15 percent trash load reduction.
7. The Permittee is in violation of the Permit because the Permittee failed to meet the required 70 percent trash load reduction by July 1, 2017, relative to 2009 baseline conditions, as required by Permit Provision C.10.a.i.a.
8. In a letter of March 23, 2018, the Permittee stated that full trash capture devices had been installed on 100 percent of the Permittee’s treatable right of way by late 2017, resulting in a 66 percent total trash load reduction. The Permittee has adopted an ordinance requiring private property owners to prevent trash from directly entering the City storm drain system (Ordinance). The implementation of this newly adopted ordinance is needed to reach 80 percent and greater trash load reduction by July 1, 2019, which would put the Permittee in compliance with Permit Provision C.10.a.i.b. The Permittee anticipates that since they are already at 66 percent trash reduction, they will quickly attain 70 percent reduction, by November 1, 2018 or before. The ordinance gives private entities 4 months to implement after written notification.
9. In the Annual Report, the Permittee proposed a preliminary schedule for adoption of the Ordinance. The schedule was revised in a March 23, 2018, letter to the Water Board, in which the Permittee submitted an updated detailed plan of actions and deadlines for completing those actions to correct the violation of the Permit requirements.

Purpose of this Order

10. This Cease and Desist Order (Order) sets deadlines for implementation of trash controls that will bring the Permittee into compliance with the 80 percent trash load reduction relative to 2009 baseline conditions, by July 1, 2019, as required by Permit Provision C.10.a.i.b.

Cease and Desist Order Authority

11. When the Water Board finds a discharge of waste is taking place that violates or will violate requirements prescribed by the Water Board, California Water Code (Water Code) section 13301 authorizes the Water Board to issue a Cease and Desist Order directing those persons not complying with the requirements or with discharge prohibitions to comply with them in accordance with deadlines set by the Water Board.
12. Because the Permittee’s violation is ongoing and because the Permittee threatens to violate more stringent Permit requirements, this Order is necessary to ensure that the Permittee

returns to compliance by describing actions required to meet the permit requirements and by tracking progress toward the compliance deadline.

13. This Order is an enforcement action of existing requirements and, as such, is exempt from the provisions of the California Environmental Quality Act (Public Resources Code § 21000 et seq.) in accordance with Title 14 of the California Code of Regulations, section 15321.
14. Reports required under this Order are monitoring and reporting requirements pursuant to Water Code section 13383.
15. The Water Board notified the Permittee and interested persons of its intent to consider adoption of this Order, and provided an opportunity to submit written comments and appear at a public hearing. The Water Board, in a public hearing, heard and considered all comments.

IT IS HEREBY ORDERED in accordance with Water Code section 13301 that the Permittee shall cease and desist from discharging and threatening to discharge trash in violation of the Permit by complying with the following provisions:

1. **Trash Reduction Implementation Actions.** The Permittee shall implement trash load reduction control actions within all significant trash generating areas within its jurisdiction and prohibit trash discharge in a timely manner sufficient to reach 70 percent trash reduction relative to the 2009 baseline condition by November 1, 2018 and 80 percent trash load reduction relative to the 2009 baseline condition by July 1, 2019.
2. **Track and Report on Trash Control Actions.** The Permittee shall submit with the 2017-2018 Annual Report by September 30, 2018, and subsequently by March 30, 2019, a brief narrative Supplemental Report that describes the Permittee's progress toward meeting the 70 percent and 80 percent trash load reduction requirements. The Supplemental Reports shall include the following:
 - a) Regarding the Ordinance requiring installation of full trash capture devices by commercial property owners within the Permittee's jurisdiction:
 - i. The status of the Ordinance's adoption
 - ii. Assuming adoption of the Ordinance:
 - a. A brief summary of the Ordinance
 - b. The timeline of implementation required by the Ordinance
 - b) For all commercial property owners subject to the Ordinance:
 - i. The status of trash reduction implementation
 - ii. The status of any enforcement actions undertaken, including actions by the Permittee against commercial property owners, to achieve compliance with the Ordinance

- c) The status of any additional implementation actions, including source control actions and offsets, used to achieve compliance with the Permit, and the resulting trash load reduction.
 - d) Progress toward meeting the trash reduction requirement by the deadline identified in Table 1, including the resulting city-wide total trash load reduction (percent).
3. **Force Majeure.*** If the Permittee is delayed, interrupted, or prevented from meeting the provisions and deadlines of this Order due to a force majeure, the Permittee shall notify the Executive Officer in writing within ten days of the date the Permittee first knows of the force majeure. The Permittee shall demonstrate that timely compliance with the Order or any affected deadlines will be actually and necessarily delayed, and that it has taken measures to avoid or mitigate the delay by exercising all reasonable precautions and efforts, whether before or after the occurrence of the force majeure.
4. **Consequences of Non-Compliance and Executive Officer Authority.** The Executive Officer is hereby authorized to take enforcement action or to request the Attorney General to take appropriate actions against the Permittee in accordance with Water Code sections 13331, 13350, 13385, and 13386. Such actions may include injunctive and civil remedies, if appropriate, or the issuance of an Administrative Civil Liability Complaint for Water Board consideration. The Water Board reserves the right to take any enforcement action authorized by law.
5. **Effective Date.** This Order shall be effective on June 13, 2018.

I, Bruce H. Wolfe, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of a Cease and Desist Order adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on June 13, 2018.

Bruce H. Wolfe
Executive Officer

* A “force majeure” is an event that could not have been anticipated by and is beyond the control of the Permittee, including an act of God; earthquake, flood, or other natural disaster; civil disturbance or strike; fire or explosion; declared war within the United States; embargo; or other event of similar import and character. “Force majeure” does not include delays caused by funding, contractor performance, equipment delivery and quality, weather, permitting, other construction-related issues, CEQA challenges, initiative litigation, adverse legislation, or legal matters (with the exception of an injunction issued by a court of law specifically preventing construction from occurring).