

RESOLUTION NO. _____

**A RESOLUTION OF THE COUNCIL OF THE CITY OF
SAN JOSE APPROVING A NEW COUNCIL POLICY 6-35
ENTITLED “SOURCE PROPERTIES OF MERCURY, PCBS,
OR OTHER POLLUTANTS: BEST MANAGEMENT
PRACTICES” RELATED TO THE MUNICIPAL REGIONAL
STORMWATER PERMIT**

WHEREAS, the Federal Clean Water Act requires the City of San José (“City”) to operate its municipal storm sewer system under a National Pollutant Discharge Elimination System (“NPDES”) Permit for the discharge of stormwater to waterways; and

WHEREAS, the State Water Resources Control Board (“Water Board”) and its regional boards administer the Clean Water Act, and the City is one of 79 public entities located in the Bay Area that are permittees under a Municipal Regional Stormwater NPDES Permit (“Stormwater Permit”) which specifies actions necessary to reduce the discharge of pollutants in stormwater to the maximum extent practicable and essentially prohibits non-stormwater discharges into the storm sewer system to protect local waterways and the Bay; and

WHEREAS, on May 11, 2022, the Water Board adopted a revised Stormwater Permit, effective July 1, 2022, and on October 11, 2023, the Water Board approved an amendment to the Stormwater Permit’s C.3 New and Redevelopment Provision, effective November 1, 2023; and

WHEREAS, the establishment of a new City Council Policy 6-35, entitled “Source Properties of Mercury, PCBs, or Other Pollutants: Best Management Practices”, which defines the best management practices, operation, and maintenance required to prevent mercury, Polychlorinated Biphenyls (“PCBs”), or other pollutant-laden sediments from discharging to the public right-of-way and the storm sewer system, is

necessary to meet the requirements of the amended Stormwater Permit, specifically the Stormwater Permit's C.11 and C.12 investigation and abatement requirements by regulating source properties; and

WHEREAS, the City's adoption of this resolution is categorically exempt from California Environmental Quality Action Section 15308 as Actions by Regulatory Agencies for Protection of the Environment;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

A new City Council Policy 6-35, entitled “Source Properties of Mercury, PCBs, or Other Pollutants: Best Management Practices”, which policy is attached hereto as Exhibit A and incorporated herein by this reference as though fully set forth herein, is hereby approved.

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ADOPTED this _____ day of _____, 2024, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

MATT MAHAN
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

City of San José, California

COUNCIL POLICY

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EFFECTIVE DATE	REVISED DATE	
APPROVED BY COUNCIL ACTION		

PURPOSE

This Policy establishes the City of San José’s (City) requirements to prevent mercury and Polychlorinated Biphenyls (PCBs), and other pollutants from entering the waterways consistent with the San Francisco Bay Region Municipal Regional Stormwater National Pollutant Discharge Elimination System (NPDES) Permit (or “Stormwater Permit”). The protection of local streams from pollution in urban runoff advances the City’s sustainability goals by ensuring good water quality, enhancing the beneficial use of local waterways, and enhancing the quality of wildlife habitat.

BACKGROUND

The Federal Clean Water Act requires the City of San José to operate under a Municipal Stormwater NPDES Permit for the discharge of stormwater via the City’s stormwater collection system. On May 11, 2022, the Regional Water Quality Control Board adopted a revised Stormwater Permit for the San Francisco Bay Region. This Stormwater Permit governs 76 Bay Area municipalities, including the City of San José.

The Stormwater Permit mandates the City implement control measures and stormwater treatment for runoff containing mercury and PCBs discharging to public rights-of-way and the stormwater collection system beginning with old industrial areas known to contribute moderately to highly elevated levels of the pollutants. The targeted control measure program described here will achieve mercury and PCBs load reductions to maintain permit compliance.

City Council Policy 6-28: Management of Pollutants During Demolition of Applicable Projects, City Council Policy 6-29: Post-Construction Urban Runoff Management, City Council Policy 8-14: Post-Construction Hydromodification Management, City Council Policy 6-36: Private Land Directly Plumbed to the Storm Sewer System: Best Management Practices, and City Council Policy 6-37: Projects Disturbing Less than One Acre: Construction Best Management Practices are related, companion policies

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that address the management of stormwater runoff to maintain predevelopment rates of infiltration, evaporation and runoff from property being developed and to minimize erosion and sedimentation in local rivers and creeks.

POLICY

This Policy requires the management of mercury- and PCBs-containing sediment runoff to the public right-of-way and stormwater collection system beginning with old industrial areas. The Policy applies to properties discharging moderate to high levels of mercury- and PCBs-containing sediment to the City's stormwater collection system ("Moderate Source Property" and/or "High Source Property"). Properties found with moderate and high levels of mercury and/or PCB-containing sediments shall develop and implement either a Source Property Control Plan or implement the Best Management Practices (BMPs) set forth in, but not limited to, this Policy. In addition to implementing the BMPs listed below, High Source Properties may be referred to the Regional Water Board for follow-up investigation and abatement. This Policy may also require properties to implement interim enhanced operation and maintenance (enhanced O&M) measures in the street or on adjacent storm drain infrastructure or implement a stormwater treatment system downstream of the property, if the City deems such actions are necessary to control pollutants.

A. Definitions

For the purposes of this Policy, the following terms shall have the following meaning.

1. **"Best Management Practices"** means any program, technology, process, siting criteria, operational method or measure, or engineered system, which when implemented prevents, controls, removes, or reduces pollution. Includes schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce water pollution. BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, litter or waste disposal, or drainage from raw material storage.
2. **"Deed In-Lieu of Foreclosure/Sale"** means a recorded document that transfers ownership of real property from the Trustor to the holder of a Deed of Trust upon consent of the Beneficiary of the Deed of Trust.
3. **"Deed of Trust"** means an instrument by which title to real property is transferred to a third-party Trustee as security for a real estate loan. This definition applies to any and all subsequent Deeds of Trusts.
4. **"Director"** means the Director of Environmental Services Department, or designee, or such other director designated by the City Manager to administer this Policy.

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5. **“Enhanced Operations and Maintenance (O&M)”** means an increase in routine or non-routine activities that remove sediments and associated particle-bound pollutants from streets, other paved surfaces, and storm drain infrastructure. Enhanced O&M can include increasing the frequency of a routine activity, upgrading the equipment used, or conducting a non-routine activity such as pipeline flushing, capture, and disposal.
6. **“Green Stormwater Infrastructure (GSI)”** means parcel-based Low Impact Development (LID) implemented on properties and public green streets and regional GSI projects.
7. **“Moderate Source Property”** means properties with on-site storm drain or surface sediment samples, which can be released to the public right-of-way and stormwater collection system, that are 0.3 to < 1.0 mg/kg for mercury and 0.2 to < 0.5 mg/kg for PCBs.
8. **“Old Industrial Areas”** means the same as in the Stormwater Permit, as may be amended, but includes land areas where industrial activities occurred prior to 1980 and has not been redeveloped.
9. **“Owner”** means any person, partnership, association, company, corporation, entity, financial institutions, or fiduciary having a legal, possessory, or equitable title or any interest in a Property.
10. **“PCBs”** means polychlorinated biphenyls.
11. **“Property”** means any improved real property, or portion thereof, situated in the City and includes any residence, building, structure or any other improvement located on the real property.
12. **“SCVURPPP”** means Santa Clara Valley Urban Runoff Pollution Prevention Program.
13. **“Stormwater Treatment Measure”** means a design feature of a development or redevelopment project intended to prevent, minimize, or treat pollutants in stormwater, or to reduce erosive flows during the life of the project pursuant to provision C.3 of the stormwater permit. Stormwater treatment measure collectively refers to site designs to promote water quality, source control measures, and hydromodification management measures. Also referred to as “post-construction stormwater control” or “post-construction stormwater measure.”
14. **“Stormwater Treatment System”** means any engineered system designed to remove pollutants from stormwater runoff by settling, filtration, biological degradation, plant uptake, media absorption/adsorption or other physical,

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biological, or chemical process. This includes landscape-based systems such as grassy swales and bioretention units as well as proprietary systems.

15. **“High Source Property”** means properties with on-site storm drain or surface sediment samples, which can be released to the public right-of-way and stormwater collection system, that are $\geq 1.0\text{mg/kg}$ for mercury and $\geq 0.5\text{mg/kg}$ for PCBs.
16. **“Source Property Pollutant Control Plan”** means a document that outlines the potential sources of mercury or PCBs on a Property and associated transport pathways, and identifies control measures that will be implemented to reduce the release of mercury or PCBs to the public right-of-way and/or stormwater collection system.
17. **“Treatment”** means any method, technique, or process designed to remove pollutants and/or solids from polluted stormwater runoff.
18. **“Wet Season”** means October 1st of a given year through April 30th of the following year.

B. Best Management Practices (BMPs)

All Moderate Source Properties and High Source Properties must either submit a Source Property Pollutant Control Plan or conform with the Best Management Practices (BMPs) as described below:

1. Source Property Pollutant Control Plan may be implemented in lieu of prescribed Best Management Practices listed in Section (B)(2). Source Property Pollutant Control Plan shall be pre-approved by the City prior to implementation and include, at minimum, the following information:
 - a. Potential Sources of the mercury and PCBs
 - b. Transport Pathways
 - c. Description of Control Measures
 - d. A schedule of operation and maintenance activities
2. Best Management Practices shall include a combination of any or all of the following, whichever the Director determines is most effective for the Property:
 - a. **Good Housekeeping** includes operational activities to reduce on-site sediment accumulation such as routine paved area sweeping, cleaning all storm inlet basins at least twice per year, repairing cracked and broken paved areas, routine employee training, and storm inlet labeling with “No Dumping! Flows to Bay.”

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- b. **Erodible Surface Stabilization** includes structural changes to bare ground that prevents sediment tracking by rain, wind and traffic such as diverting runoff around/away from unpaved surfaces; stabilizing erodible surfaces with vegetation/gravel, mulch/degradable mulch, or geotextiles; watering down dirt areas to control dust; and stabilizing driveways, entrances, and exits.
- c. **Storm Drain Inlet Protection** includes the installation of structurally appropriate equipment to capture and contain sediments such as inlet filters, filter mats, filter bags, compost socks, and fiber rolls.
- d. **Perimeter Controls** includes site structural improvements to prevent sediment-laden runoff from leaving the property such as installing curbs and speed bumps to redirect stormwater, or seasonally deploying compost socks, wattles, or silt fences.
- e. **Installation of Stormwater Treatment System** as defined in this Policy. This may include High-Flow Capacity Stormwater Treatment Systems and Inlet-based Stormwater Screening Devices that remove sediment, trash, and other pollutants from stormwater through screening, trapping, and settling mechanisms.
- f. **Permanently Installed & Maintained Stormwater Treatment Measures** includes specifically engineered systems calculated to capture and treat site runoff such as manufactured media filters and bioretention areas. This includes Green Stormwater Infrastructure.
- g. **Spill Prevention, Control and Response Procedures** for potential PCB containing equipment includes using secondary containment, inspecting equipment, preventative maintenance, having spill kits available, immediately cleaning up any leaks or spills, using dry clean up methods, proper waste disposal and notification procedures.
- h. **Enhanced Operations and Maintenance**, either on the Property or, if the Property impacts the public right of way. If the Property impacts the public right of way, the Property Owner may be required to obtain the necessary City permits and approvals to maintain the right of way or at the City's sole discretion reimburse costs.
- i. **Other BMPs as required by the Director.** Upon notice any other BMP as may be approved from time to time pursuant to the provisions of this Policy.

C. Operation and Maintenance

- 1. All BMPs and Source Control Plans applicable to Moderate Source Properties and High Source Properties shall be permanently operated and maintained by the Property Owner(s), its administrators, property managers, lessees,

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successors, including any homeowner's associations ("Owner") pursuant to best practices, guidelines, or regulations identified by the City Manager.

2. The Owner(s) shall keep a maintenance schedule and record of all maintenance activities. Owner(s) of Property shall retain, and make available for inspection and copying, all records of inspection and maintenance activities performed on the Property within the five years immediately preceding the demand for such records by any representative of the City.
3. It shall be unlawful for any person to alter, remove, fail to maintain a BMP(s), or to cause, allow or permit alteration, removal, or failure to maintain a BMP without approval from the City.
4. It shall be unlawful for any person to fail to maintain their property in accordance with a City-approved Source Control Plan.
5. Any Owner(s) of Property on which BMP (s) has been installed, or for which a Source Control Plan has been approved, shall, upon transferring ownership of such property, provide, in writing, the new Owner(s) information indicating the location, and design of the BMP, and the Source Control Plan, if one exists.

D. Compliance with All Obligations

Nothing in this or any other City Policy relieves the Property Owner of complying with all state and federal requirements regarding the removal, transport, documentation, or storage of mercury and PCBs. Applicant shall determine if additional agency notification or approvals, or additional sampling for and abatement of mercury and PCBs, is required under other applicable law. Property Owner shall comply with all federal and state laws and regulations, including but not limited to health, safety, and environmental laws and regulations, that relate to best management practices for mercury and PCBs in old industrial areas, including but not limited to PCBs in sediment runoff, other mercury and PCBs-contaminated materials, mercury and PCBs-contaminated liquids, and mercury and PCBs waste. The requirements of this section do not replace or supplant the requirements of state or federal law, including but not limited to the Toxic Substances Control Site Act, 40 Code of Federal Regulations (CFR) Part 761, and California Code of Regulations (CCR) Title 22.