

File No. 170123 Committee Item No. 4
Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS
AGENDA PACKET CONTENTS LIST

Committee: Government Audit and Oversight Date April 28, 2017

Board of Supervisors Meeting Date _____
Cmte Board

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| <input type="checkbox"/> | <input type="checkbox"/> | Resolution |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Ordinance |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Legislative Digest |
| <input type="checkbox"/> | <input type="checkbox"/> | Budget and Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Introduction Form |
| <input type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
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| <input type="checkbox"/> | <input type="checkbox"/> | Grant Information Form |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Budget |
| <input type="checkbox"/> | <input type="checkbox"/> | Subcontract Budget |
| <input type="checkbox"/> | <input type="checkbox"/> | Contract/Agreement |
| <input type="checkbox"/> | <input type="checkbox"/> | Form 126 – Ethics Commission |
| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
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OTHER (Use back side if additional space is needed)

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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Gen Permit 02/05/13</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Port Memo 01/30/17</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Referral FYI 02/13/17</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Port Commission Reso No. 14-26</u> |
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Completed by: Erica Major Date April 21, 2017
Completed by: _____ Date _____

1 [Public Works Code - Construction Site Runoff on Port Property - Enforcement]

2
3 **Ordinance amending the Public Works Code to authorize the Port Executive Director to**
4 **impose penalties for failure to comply with requirements relating to construction site**
5 **runoff on property within Port Commission jurisdiction.**

6 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
7 **Additions to Codes** are in *single-underline italics Times New Roman font*.
8 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
9 **Board amendment additions** are in double-underlined Arial font.
10 **Board amendment deletions** are in ~~strikethrough Arial font~~.
11 **Asterisks (* * * *)** indicate the omission of unchanged Code
12 subsections or parts of tables.

13 Be it ordained by the People of the City and County of San Francisco:

14 Section 1. Article 4.2 of the Public Works Code is hereby amended by revising Section
15 146.10 to read as follows:

16 **SEC. 146.10. ENFORCEMENT.**


17 Persons violating any provision of the Construction Site Runoff Control Permit or
18 Sections 146 – 146.11 of this Article or applicable laws or regulations are subject to
19 enforcement by the General Manager pursuant to Section 132 of Article 4.1 of this Code.
20 Persons violating Sections 146 – 146.11 of Article 4.2 or applicable laws or regulations are
21 subject to penalties and abatement in accordance with Sections 133 and 134 of Article 4.1 of
22 this Code, and any other remedies allowed by law. For construction projects in areas of the City
23 under the jurisdiction of the Port Commission, the Port's Executive Director or his or her designee
24 shall have enforcement authority identical to the enforcement authority referenced in the two preceding
25 sentences.

1 Section 2. Effective Date. This ordinance shall become effective 30 days after
2 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
3 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
4 of Supervisors overrides the Mayor's veto of the ordinance.

5 Section 3. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
6 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
7 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
8 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
9 additions, and Board amendment deletions in accordance with the "Note" that appears under
10 the official title of the ordinance.

11
12 APPROVED AS TO FORM:
13 DENNIS J. HERRERA, City Attorney

14 By:


15 RONA H. SANDLER
16 Deputy City Attorney

17 n:\legana\as2014\1400455\01012776.doc

LEGISLATIVE DIGEST

[Public Works Code - Construction Site Runoff on Port Property - Enforcement]

Ordinance amending the Public Works Code to authorize the Port Executive Director to impose penalties for failure to comply with requirements relating to construction site runoff on property within Port Commission jurisdiction; and making environmental findings.

Existing Law

Article 4.2 of the Public Works Code establishes pollution prevention controls for construction site runoff discharges into the sewer system by requiring among other things, a Construction Site Runoff Control Permit issued by the San Francisco Public Utilities Commission (SFPUC) prior to commencement of any land-disturbing activities. Permittees must perform daily inspections, maintain, and repair all graded surfaces and erosion and sediment controls, drainage structures, or other protective devices, plantings, and ground cover installed while construction is active. The Port Building Code contains similar requirements with respect to these activities on lands within the jurisdiction of the Port Commission. Article 4.2 of the Public Works Code also provides for enforcement of violations of the permit, including monetary penalties, by the SFPUC General Manager.

Amendments to Current Law

The proposed ordinance would amend Article 4.2 of the Public Works Code to authorize the Port Commission's Executive Director to utilize the same enforcement mechanisms as the SFPUC General Manager with respect to these requirements within Port jurisdiction.

Background Information

The Federal Clean Water Act and a National Pollution Discharge Elimination System Permit issued by the State of California (MS4 Permit) require the City and County of San Francisco to administer a Construction Site Runoff Control Program that protects water quality by controlling the discharges from construction sites and preventing erosion and sedimentation due to construction activities. The SFPUC is responsible for maintaining compliance with the MS4 Permit for non-Port municipal separate storm sewer systems as further specified under existing law. The Port has a separate MS4 permit applicable to Port lands and has implemented the required elements of a Construction Site Runoff Control Program through the Port Building Code. The proposed ordinance will provide the means to enforce the Port's existing requirements, including the imposition of monetary penalties, for which the Port does not have independent authority.

MEMORANDUM

May 9, 2014

TO: MEMBERS, PORT COMMISSION
Hon. Leslie Katz, President
Hon. Willie Adams, Vice President
Hon. Kimberly Brandon
Hon. Mel Murphy
Hon. Doreen Woo Ho

FROM: Monique Moyer
Executive Director

SUBJECT: Request Port Commission Approval of a Resolution urging the Board of Supervisors to amend the San Francisco Public Works Code to authorize the Port to impose penalties to enforce the Port's Construction Site Runoff Control Program (Port Building Code Section 106A.3.2.5)

DIRECTOR'S RECOMMENDATION: Approve Attached Resolution

EXECUTIVE SUMMARY

The Port is responsible for a stormwater conveyance system which is separate from the City's sewer system. Rather than flowing to a wastewater treatment plant, this stormwater is discharged directly to the San Francisco Bay. To protect water quality, the Port's stormwater conveyance system is permitted by the State of California's Municipal Separate Storm Sewer Systems Permit (MS4 Permit). This MS4 Permit requires the Port to manage the quality of stormwater runoff at its properties including construction sites. Currently, the Port lacks the ability to enforce stormwater protection measures at construction sites through the imposition of fines. Port staff recommends that the Port Commission request the Board of Supervisors to amend the City's Public Works Code to grant these enforcement powers to the Port.

BACKGROUND

Construction sites can be significant sources of stormwater pollution. Harmful materials from construction sites such as concrete, sediment, debris, and other pollutants can wash into sewer systems and storm drains. These pollutants can reach the Bay triggering serious water quality concerns.

THIS PRINT COVERS CALENDAR ITEM NO. 10A

The federal government has delegated to the State of California the authority to implement the Clean Water Act. Under this authority, the State has issued an MS4 Permit to the Port. This MS4 Permit was revised and re-issued by the State in 2013. The new permit requires the Port to adopt and administer a Construction Site Runoff Control Program that protects water quality by controlling discharges from construction sites into sewer systems and preventing erosion and sedimentation due to construction activities. The MS4 Permit also requires that the Port have legal authority to levy citations with monetary fines against parties who fail to comply with program requirements.

The Port's Construction Site Runoff Control Program is codified for the first time in Port Building Code Section 106A.3.2.5 (adopted by the Port Commission on December 12, 2013 by Resolution No. 13-50). Among other things, Port Building Code Section 106A.3.2.5 requires persons conducting construction activities on lands within Port Commission jurisdiction to comply with the requirements articulated in the City's Construction Site Runoff Ordinance 260-13 (Ordinance) newly enacted by the Board of Supervisors in November, 2013. The Ordinance includes obtaining a Construction Site Runoff Control Permit prior to the commencement of land-disturbing activities. However, absent Board of Supervisors' action, the Port does not have independent authority to impose monetary penalties to enforce these provisions.

Existing City Law

The San Francisco Public Utilities Commission (SFPUC) has a separate MS4 Permit that governs non-Port municipal separate storm sewer systems. On November 5, 2013, the Board of Supervisors enacted Ordinance 260-13 amending Article 4.2 of the Public Works Code to authorize and codify the SFPUC's construction site runoff control program. The Ordinance also authorizes enforcement of violations of the Ordinance and permits issued under the Ordinance, including the imposition of monetary penalties by the SFPUC General Manager.

Proposed Amendments to Existing City Law

The proposed ordinance, attached as Exhibit A, would amend Article 4.2 of the Public Works Code to authorize the Port's Executive Director to utilize the same enforcement mechanisms as the SFPUC General Manager with respect to construction site runoff control requirements on lands within Port jurisdiction and provide for the imposition of monetary penalties for which the Port does not have independent authority. Port staff has coordinated with SFPUC staff to amend the Ordinance and to establish uniform practices related to stormwater enforcement.

RECOMMENDATION

In order to comply with the requirements of its MS4 Permit, staff recommends that the Port Commission approve a resolution urging the Board of Supervisors to amend the San Francisco Public Works Code to authorize the Port to impose penalties for failure to comply with the requirements of the Port's Construction Site Runoff Control Program and direct the Executive Director to pursue such legislation with the Board of Supervisors.

Prepared by: Shannon Alford, Regulatory Specialist
and
Richard Berman, Utility Specialist

For: Susan Reynolds
Deputy Director for Real Estate

Exhibit A: Proposed Ordinance

**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 14-26

- WHEREAS, construction site runoff can be a significant contributor to flooding, infrastructure damage, and pollution to the San Francisco Bay; and
- WHEREAS, the Federal Clean Water Act and Municipal Separate Storm Sewer Systems Permit (MS4 Permit) issued by the State of California to the Port requires the Port to adopt and administer a Construction Site Runoff Control Program that protects water quality by controlling the discharge of sediment and other pollutants from construction sites into sewer systems and includes monetary penalties as an enforcement mechanism; and
- WHEREAS, the Port has adopted a Construction Site Runoff Control Program which is codified in the Port's Building Code Section 106A.3.2.5; and
- WHEREAS, Board of Supervisor's authorization is required for the Port to impose monetary penalties; and
- WHEREAS, Article 4.2 of the Public Works Code authorizes the General Manager of the San Francisco Public Utilities Commission (SFPUC) to impose monetary penalties for the SFPUC's construction site runoff control program which is similar to the Port's; and
- WHEREAS, Port staff has prepared a proposed ordinance that would amend Article 4.2 of the Public Works Code to similarly authorize the Port's Executive Director to impose monetary penalties for violations of the Port's Construction Site Runoff Control Program (the "Proposed Ordinance"); now, therefore be it
- RESOLVED, that the Port Commission authorizes and directs the Port's Executive Director to submit the Proposed Ordinance to the San Francisco Board of Supervisors for consideration and adoption and urges the Board of Supervisors to adopt the Proposed Ordinance.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of May 13, 2014.

Secretary

*NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)
GENERAL PERMIT FOR
WASTE DISCHARGE REQUIREMENTS (WDRs)
FOR
STORM WATER DISCHARGES FROM SMALL MUNICIPAL SEPARATE STORM
SEWER SYSTEMS (MS4s)

ORDER NO. 2013-0001-DWQ
NPDES NO. CAS000004

This Order was adopted by the State Water Resources Control Board on:	February 5, 2013
This Order shall become effective on:	July 1, 2013
This Order shall expire on:	June 30, 2018

IT IS HEREBY ORDERED that, as of July 1, 2013, this Order supersedes Order No. 2003-0005-DWQ.


I, Jeanine Townsend, Clerk to the Board, do hereby certify that this Order, with all attachments, is a full, true, and correct copy of an Order adopted by the State Water Resources Control Board, on **February 5, 2013**.

AYE: Chairman Charles R. Hoppin
 Vice Chair Frances Spivy-Weber
 Board Member Tam M. Doduc
 Board Member Steven Moore
 Board Member Felicia Marcus

NAY: None

ABSENT: None

ABSTAIN: None



Jeanine Townsend
Clerk to the Board

E.3. NON-TRADITIONAL SMALL MS4S PERMITTEES

E.3.a. All Renewal Non-Traditional Small MS4 Permittees shall comply with Section F of this Order. Where the requirements of a certain subsection provide a compliance date that is past the effective date of this Order, the Renewal Non-Traditional Small MS4 shall implement its existing program until that date.

E.3.b. New Non-Traditional Small MS4s Permittees shall comply with Section F of this Order.

E.4. SMALL MS4 ASBS PERMITTEES

Both Traditional and Non-traditional Small MS4s Permittees that discharge to ASBS as listed on Attachment D shall comply with Attachment C in addition to all other applicable provisions of this Order.

E.5. SEPARATE IMPLEMENTING ENTITY (SIE)

Permittees, both Traditional and Non-traditional Small MS4s, may rely on a SIE to satisfy one or more of the permit obligations, if the SIE can appropriately and adequately address the storm water issues of the Permittee. The SIE must agree to implement the BMPs, or components thereof, to achieve compliance with this Order. If the SIE fails to implement the BMPs, the Permittee remains responsible for compliance with this Order.

E.6. PROGRAM MANAGEMENT ELEMENT

To effectively implement a coordinated storm water program, the Permittee shall have an overarching Program Management element in its storm water management program. The Program Management element shall include the following:

E.6.a. Legal Authority

- (i) **Task Description** – Within the second year of the effective date of the permit, the Permittee shall review and revise relevant ordinances or other regulatory mechanisms, or adopt any new ordinances or other regulatory mechanisms, to obtain adequate legal authority, to the extent allowable under state or local law, to control pollutant discharges into and from, as applicable, its MS4, and to meet the requirements of this Order.
- (ii) **Implementation Level** –At a minimum, the Permittee shall have adequate legal authority to:
 - (a) Effectively prohibit non-storm water discharges through the MS4. Exceptions to this prohibition are NPDES-permitted discharges of non-storm water and non-storm water discharges in B.3 that are considered non-significant contributors of pollutants. Where the non-storm water discharge is to a segment of an MS4 that discharges directly to an ASBS, exceptions to the non-storm water prohibition are specified in Attachment C.

- (b) Detect and eliminate illicit discharges and illegal connections to the MS4. Illicit connections include pipes, drains, open channels, or other conveyances that have the potential to allow an illicit discharge to enter the MS4. Illicit discharges include all non-storm water discharges not otherwise authorized in this Order, including discharges from organized car washes, mobile cleaning and pressure wash operations,
- (c) Respond to the discharge of spills, and prohibit dumping or disposal of materials other than storm water into the MS4.
- (d) Require parties responsible for runoff in excess of incidental runoff to implement Discharge Prohibition B.4.a-e.
- (e) Require operators of construction sites, new or redeveloped land; and industrial and commercial facilities to minimize the discharge of pollutants to the MS4 through the installation, implementation, or maintenance of BMPs consistent with the California Storm Water Quality Association (CASQA) Best Management Practice Handbooks or equivalent.
- (f) Require information deemed necessary to assess compliance with this Order. The Permittee shall only require information in compliance with the Homeland Security Act or any other federal law that concerns security in the United States. The Permittee shall also have the authority to review designs and proposals for new development and redevelopment to determine whether adequate BMPs will be installed, implemented, and maintained during construction and after final stabilization (post-construction).
- (g) Enter private property for the purpose of inspecting, at reasonable times, any facilities, equipment, practices, or operations for active or potential storm water discharges, or non-compliance with local ordinances/standards or requirements in this Order, as consistent with any applicable state and federal laws.
- (h) Require that dischargers promptly cease and desist discharging and/or cleanup and abate a discharge, including the ability to:
 - 1) Effectively require the discharger to abate and clean up their discharge, spill, or pollutant release within 72 hours of notification; high risk spill should be cleaned up as soon as possible.
 - 2) Require abatement within 30 days of notification, for uncontrolled sources of pollutants that could pose an environmental threat;
 - 3) Perform the clean-up and abatement work and bill the responsible party, if necessary;
 - 4) Provide the option to order the cessation of activities until such problems are adequately addressed if a situation persists where pollutant-causing sources or activities are not abated;
 - 5) Require a new timeframe and notify the appropriate Regional Water Board when all parties agree that clean-up activities cannot be completed within the original timeframe and notify the appropriate Regional Water Board in writing within five business days of the determination that the timeframe requires revision.
- (i) When warranted, have the ability to:
 - 1) Levy citations or administrative fines against responsible parties either immediately at the site, or within a few days.

- 2) Require recovery and remediation costs from responsible parties.
- (j) Impose more substantial civil or criminal sanctions (including referral to a city or district attorney) and escalate corrective response, consistent with its Enforcement Response Plan developed pursuant to Section E.6.c., for persistent non-compliance, repeat or escalating violations, or incidents of major environmental harm.

E.6.b. Certification

- (i) **Task Description** – Within the second year of the effective date of the permit, the Permittee shall certify by its Principal Executive Officer, Ranking Elected Official, or Duly Authorized Representative as described in 40 Code of Federal Regulations section 122.22(b) that the Permittee has and will maintain full legal authority to implement and enforce each of the requirements contained in this Order.
- (ii) **Implementation Level** – The Permittee’s certification statement shall include the following:
 - (a) Identification of all departments within the Permittee’s jurisdiction that conduct storm water-related activities and their roles and responsibilities under this Order.
 - (b) Citation of storm water runoff related ordinances, identification of the topics each ordinance addresses;
 - (c) Identification of the local administrative and legal procedures and ordinances available to mandate compliance with storm water-related ordinances and therefore with the conditions of this Order.
 - (d) A description of how storm water related-ordinances are reviewed and implemented.
 - (e) A statement that the municipality will implement enforcement actions consistent with its Enforcement Response Plan developed pursuant to Section E.6.c.
- (iii) **Reporting** – All Permittees shall submit in the second year online Annual Report, a statement signed by an authorized signatory certifying the Permittee has adequate legal authority to comply with all Order requirements.

E.6.c. Enforcement Measures and Tracking

- (i) **Task Description** – Within the third year of the effective date of the permit, the Permittee shall develop and implement an Enforcement Response Plan. The Enforcement Response Plan shall contain enforcement procedures and actions and identify the Permittee’s responses to violations and describe how the Permittee will address repeat and continuing violations by implementing progressively stricter responses as needed to achieve compliance.
- (ii) **Implementation Level** - The Enforcement Response Plan shall describe how the Permittee will use each of the following types of enforcement responses based on the type of violation:
 - (a) **Verbal Warnings** – Verbal warnings are primarily consultative in nature. At a minimum, verbal warnings shall specify the nature of the violation and required corrective action.

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

TO: Mohammed Nuru, Director, Public Works
Harlan Kelly, Jr., General Manager, Public Utilities Commission
John Rahaim, Director, Planning Department
Tom Hui, Director, Department of Building Inspection

FROM: Erica Major, Assistant Clerk, Government Audit and Oversight Committee,
Board of Supervisors

DATE: February 13, 2017

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Government Audit and Oversight Committee has received the following proposed legislation, introduced by the Port Department on February 7, 2017:

File No. 170123

Ordinance amending the Public Works Code to authorize the Port Executive Director to impose penalties for failure to comply with requirements relating to construction site runoff on property within Port Commission jurisdiction.

If you have any comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

c: Frank Lee, Public Works
Juliet Ellis, Public Utilities Commission
Donna Hood, Public Utilities Commission
John Scarpulla, Public Utilities Commission
Scott Sanchez, Planning Department
Lisa Gibson, Planning Department
AnMarie Rodgers, Planning Department
Aaron Starr, Planning Department
Joy Navarrette, Planning Department
Jeanie Poling, Planning Department
William Strawn, Department of Building Inspection
Carolyn Jayin, Department of Building Inspection



January 30, 2017

Brent Jalipa
Legislative Clerk
Board of Supervisors - Clerk's Office
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102

Subject: Proposed Ordinance

Mr. Jalipa:

Per our conversation, for introduction Tuesday, February 7th, please find attached the following documents in support of the Port's proposed Ordinance amending the Public Works Code to authorize the Port Executive Director to impose penalties for failure to comply with requirements relating to construction site runoff on property within Port Commission jurisdiction:

- Draft Ordinance (red-lined)
- Draft Ordinance (MS Word)
- Legislative Digest
- Port Commission Staff Report and Reso
- MS4 Storm Water Permit

The proposed ordinance would amend Article 4.2 of the Public Works Code to authorize the Port Commission's Executive Director to utilize the same enforcement mechanisms as the SFPUC General Manager with respect to these requirements within Port jurisdiction.

Please feel free to contact me if you have any questions at (415) 215-4935.

Sincerely,

Daley Dunham
Special Projects Manager