

## **Board sets limits on pollution in runoff**

By Tracey Kaplan  
San Jose Mercury News  
October 18, 2001

In a far-reaching attempt to reduce the largest source of water pollution into San Francisco Bay, government regulators Wednesday ruled that South Bay builders must remove motor oil, pesticides and other contaminants from storm runoff before letting it flow into the bay.

For the first time, private developers and cities will be required to set aside part of their land to capture and clean the tainted rainwater, either through underground filtering systems, detention ponds or grassy ditches.

The order approved by the Regional Water Quality Control Board applies only to Santa Clara County, but has widespread implications because regulators say they intend to impose it on the entire Bay Area.

The new regulation will apply to most projects that pave or redevelop land, including homes, roads, parking lots and public, commercial or industrial buildings. It's aimed at cleaning water that collects heavy metals and other pollutants from pavement and other surfaces before washing off into streams.

Opponents, including developers and local cities, say it will increase the cost of a typical new house by as much as \$12,000 and force cities to spend more to build fire stations, libraries and roads. They are considering appealing the decision to the state water-quality board, which recently upheld similar rules in Los Angeles. Other builders are considering a lawsuit to overturn the regulations.

"It will have a devastating effect on housing affordability," said Amy Glad, executive director of the South Bay chapter of the Home Builders Association of Northern California. "For all the interest in encouraging 'smart growth,' this proposal will make it far more desirable to develop in land-rich rural areas."

But environmentalists say implementing the new regulations won't cost that much, and that the benefits are well worth it.

"If we keep paving the watershed, we're going to get flooded or poison ourselves," said Patrick T. Ferraro, executive director of the Silicon Valley Pollution Prevention Center. "This protects the bay, the streams and the drinking-water quality."

The order will be enacted in phases. The first phase, which takes effect July 1, 2008, applies to developments that create or reuse one acre or more of paved surface. The second phase will apply to far smaller projects—6,000 square feet or more—about eight

times less paved area than in the first phase. The second phase will become effective in October 2004.

The new regulations were pushed locally by an environmental group called San Francisco Baykeeper after Los Angeles County adopted similar standards last year, followed by other Southern California jurisdictions, including San Diego.

Since Congress passed the Clean Water Act in 1974, great strides have been made in cleaning up water pollution from “point sources,” such as factories and sewage plants.

The remaining problem is from “non-point source” pollution, or runoff, which washes into bays, lakes and streams during rainfall and is much harder to control.

The Bay Area regional water board negotiated for 18 months with builders and local cities, who argued that the requirements would add excessive costs to the construction of affordable housing, transit-oriented development and city facilities. Opponents succeeded only in getting the water board to delay implementation by about nine months.

It is unclear whether San Jose’s controversial new City Hall is exempt. If it isn’t, the city would have to spend about \$80 million or \$40 million more on the controversial \$887 million project to bring it into compliance, said Bill Ekern, project director for the city’s redevelopment agency.

That would further bolster the case made by critics, who argue that this project violates a 1996 voter approved ballot initiative that requires the city hall to cost less than continuing to lease office space.

To be exempt, the City Hall project would have to allocated funds and break ground by next October. The city was scheduled to break ground in December, but the start date has been postponed because the project is mired in a legal battle over costs.

If the city fails to start construction by next fall, environmental services director Carl Mosher said, he will seek a waiver from the new rules. San Jose and the other 14 cities in the county will be drafting waiver regulations to submit to the water board for approval, including a provision that would exempt all projects that would cost over a certain threshold.

“That’s going to be our challenge in next year—to write the waiver language in a way the board approves that benefits us,” Mosher said.

Santa Clara County voters traditionally support clean waterways. Last November, voters approved a parcel tax that will raise \$870 million over 15 years to increase flood protection along nine streams and rivers, restore natural conditions along waterways, create wildlife habitats and improve water quality.

The new regulations won't do anything about runoff from existing development, except as buildings and road are slowly replaced. But the Bay Area is expected to grow by about 2.3 million people by 2040, the equivalent of adding two more cities roughly the size of San Jose.

"It's intended to help stop the problem from getting worse," said Jonathan Kaplan, a spokesman for San Francisco Baykeeper. "The reason why it's such a big deal is because it's going to spread through the Bay Area and with all the growth we expect it'll make a big difference."