



Alan C. Lloyd, Ph.D.
Agency Secretary

State Water Resources Control Board

Division of Water Quality

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Arnold Schwarzenegger
Governor

DEC 06 2005

Pelican Point Community Association
C/O Merit Property Management, Inc.
1 Polaris Way
Aliso Viejo, California 92656
ATTN: Terri Vaccher

Dear Ms. Vaccher:

PROHIBITION OF WASTE DISCHARGES INTO THE IRVINE COAST AREA OF SPECIAL BIOLOGICAL SIGNIFICANCE

The California Ocean Plan (Ocean Plan), adopted by the State Water Resources Control Board (State Water Board) and approved by the U.S. Environmental Protection Agency (U.S. EPA), lists 34 coastal marine waters that the State Water Board has designated as Areas of Special Biological Significance (ASBS). ASBS are defined as those areas designated by the State Water Board requiring protection of species or biological communities to the extent that alteration of natural water quality is undesirable.

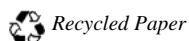
The Ocean Plan, Section III.E.1, requires that: "Waste shall not be discharged to areas designated as being of special biological significance. Discharges shall be located a sufficient distance from such designated areas to assure maintenance of natural water quality conditions in these areas." "Waste" is defined as the "total discharge, of whatever origin." The discharge of storm water (dry and wet weather runoff) from the Pelican Point Community into the Irvine Coast ASBS is subject to the prohibition against waste discharges to an ASBS.

The Ocean Plan, Section III.I.1, allows the State Water Board to grant exceptions to this prohibition, provided that the exception will not compromise protection of ocean waters for beneficial uses, and the public interest will be served. Prior to granting an exception, the State Water Board must hold a public hearing, and there must be compliance with the California Environmental Quality Act. The U.S. EPA must also concur. Information regarding the Ocean Plan, ASBS, or existing exceptions to the Ocean Plan may be found at <http://www.waterboards.ca.gov/plnspols/oplans/index.html>.

Because you do not already have an exception issued by the State Water Board for storm water discharges into the ASBS, you are not authorized to discharge in that location. You may, however, request to be covered under the exception process if you believe your discharge will not compromise protection of ocean waters for beneficial uses, and the public interest will be served. Please notify the State Water Board prior to January 31, 2006 whether you intend to seek an exception. If you plan to seek an exception, the following specific information must to be submitted by May 31, 2006 to support the State Water Board's consideration of an exception to the Ocean Plan for discharges to ASBS:

1. The discharger's name, address, and contact information.

California Environmental Protection Agency



2. Any applicable permit or order numbers, if the discharge is or has been regulated under a National Pollutant Discharge Elimination System (NPDES) Permit or Waste Discharge Requirements.
3. A signed statement requesting coverage under an exception from the ASBS waste discharge prohibition found in Sections III.E.1 and III.H.2 of the Ocean Plan.
4. Documentation that shows that allowing the discharge of storm water runoff to continue will not compromise protection of ocean waters for beneficial uses. Note that one beneficial use is the preservation and enhancement of ASBS, which are defined as those areas designated by the State Water Board as requiring protection of species or biological communities to the extent that alteration of natural water quality is undesirable. This means that any data that you may have on the status and description of marine life in the ASBS, and on the natural background of the ASBS, are relevant and must be submitted. At a minimum, you must submit a representative, quantitative description of marine life near the discharges and at a reference location away from the discharges.
5. An assessment of all available historical data on discharge volume, chemical and physical constituents, toxicity, and indicator bacteria in the runoff and in the ambient marine water of the ASBS. At a minimum, the information must include the measurement of a representative sample within the last two years or the upcoming storm season (runoff and adjacent marine receiving water) during a storm event for each of the following constituents:
 - a. total Ocean Plan metals
 - b. polynuclear aromatic hydrocarbons (PAHs)
 - c. oil and grease
 - d. ammonia nitrogen
 - e. acute toxicity for a marine species
 - f. critical life stage (chronic) toxicity for three marine species
 - g. indicator bacteria including total coliform, fecal coliform (or *E. coli*), and enterococcus.The applicable Ocean Plan detection limits and other applicable monitoring requirements must be adhered to in performing this work. If you are responsible for more than ten municipal discharge points, then a representative sample must be (or have been) collected and analyzed for one of every ten discharge points. All samples must be collected during a storm event that is greater than 0.1 inch and at least 72 hours from the previously measurable storm event. Where feasible, the variance in the duration of the event and the total rainfall of the event should not exceed 50 percent from the average or median rainfall event in that area.
6. A characterization of the watershed areas draining to the ASBS in terms of land use, population density, and percentage of impervious surface. If there is land under your jurisdiction where pesticides or herbicides are applied, provide a listing of such treatments in terms of the chemicals used and application rates.
7. A description of current treatment processes, pollution controls, and/or best management practices currently used or planned (with a schedule for implementation).
8. An analysis of alternatives to the discharge and their impacts if implemented.
9. Compliance history for drainages into the ASBS, including any spills or upset events that resulted in the discharge of toxic or otherwise prohibited substances, including untreated or partially treated wastewater.
10. Documentation explaining how the public interest will be served by granting the exception.

Please send this information to the State Water Board, Division of Water Quality, attention Dominic Gregorio, and to Gerard Thibeault, Executive Officer of the Santa Ana Regional Water Quality Control Board (Santa Ana Water Board).

The State Water Board held workshops in Monterey on August 31, 2005 and in San Pedro on October 24, 2005 to discuss the ASBS exception process. At the workshops, staff proposed the concept of using the exception process to develop Special Protections to address storm water runoff into ASBS. Staff is proceeding with that proposed approach. The Special Protections under consideration include minimizing or eliminating dry weather flows and reducing pollutants draining to ASBS to maintain natural water quality in the receiving waters. In the meantime, you are requested to plan for and institute best management practices to eliminate or minimize dry weather flows and to reduce pollutants in storm water runoff.

If the State Water Board follows this approach, the Santa Ana Water Board may allow your discharges to be covered under a Storm Water NPDES Permit, with appropriate provisions required in your storm water management plan. In all cases, the Santa Ana Water Board will enforce the mitigation measures described in the Special Protections resolution adopted by the State Water Board.

If you have any questions, feel free to contact me at (916) 341-5458 (smartinson@waterboards.ca.gov), or Dominic Gregorio, Chief of the Ocean Unit, Division of Water Quality, at (916) 341-5488 (dgregorio@waterboards.ca.gov).

Sincerely,

ORIGINAL SIGNED BY

Stan Martinson, Chief
Division of Water Quality

cc: Mr. Anthony Longo, President
Pelican Point Community Association
17 Shoreline
Newport Coast, California 92657

(See Next Page)

cc: (continuation page)

Mr. Larry McKenney
Orange County Watershed and Coastal Resources Office
P.O. Box 4048

Mr. Terri Vaccher

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Santa Ana, CA 92702-4048

Mr. John Kappeler
City of Newport Beach
3300 Newport Boulevard
Newport Beach, CA 92663

Mr. Gerard Thibeault, Executive Officer
Santa Ana Regional Water Quality Control Board
3737 Main St. Suite 500
Riverside, CA 92501

bcc: Tom Howard, EXEC
Sheila Vassey, OCC
Betsy Jennings, OCC
John Norton, OSI
John Ladd, DWQ
Bruce Fujimoto, DWQ
Dominic Gregorio, DWQ

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