

**STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION**

STAFF REPORT FOR REGULAR MEETING OF MAY 12, 2005

ITEM: 4

SUBJECT: ISSUANCE OF NPDES MUNICIPAL STORM WATER PERMIT WASTE DISCHARGE REQUIREMENTS FOR STORM WATER DISCHARGES FROM SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEMS (PHASE II STORM WATER PERMIT), MONTEREY REGIONAL GROUP, MONTEREY COUNTY

KEY INFORMATION

Location: Cities of Monterey, Del Rey Oaks, Sand City, Seaside, Pacific Grove, Marina, and the County of Monterey, all within Monterey County
Discharge Type: Municipal Storm Water
Existing Orders: none

I. SUMMARIZED BACKGROUND HISTORY

The Cities of Monterey, Del Rey Oaks, Sand City, Seaside, Pacific Grove, Marina, and the County of Monterey (hereinafter referred to as the Monterey Regional Group) are required by the Clean Water Act §402(p) to obtain permit coverage pursuant to the NPDES Municipal Storm Water Permit for Small Municipal Separate Storm Sewer Systems (General Permit, or Phase II Storm Water Permit). The keystone of the Phase II Storm Water permit program is the Storm Water Management Program that is written by the permit applicants. The Pebble Beach Company and the City of Carmel-by-the-Sea are joining with the Monterey Regional Group in instituting the Monterey Regional Storm Water Management Program (MRSWMP). The Pebble Beach Company is not a municipality, and therefore is not eligible for obtain General Permit coverage. Carmel-by-the-Sea has requested consideration for a waiver from the General Permit. This issue will be handled separately from the MRSWMP consideration.

The process of gaining Phase II Storm Water Permit coverage begins with the applicant submitting a Notice of Intent, and a Storm Water Management Program that meets all the requirements of Section D of the General Permit. Regional Water Quality Control Board (Water Board) staff review the SWMP, and, if it is deemed complete, post the SWMP to the State Board website for a 60-day public comment period and notify interested parties via email of the posting. If no comments are received, or if a commenter's concerns are satisfactorily resolved, then the enrollee gains Phase II General Permit coverage. However, if a commenter's concerns are not resolved to the satisfaction of all parties involved, then the third party must request a hearing from the Water Board in a letter that includes the reason(s) the hearing is being requested (e.g., why the Storm Water Management Program is inadequate).

The Monterey Regional Group developed Monterey Regional Storm Water Management Program (MRSWMP) over the course of about

four years, with input from Jennifer Bitting, Storm Water Program coordinator, Donette Dunaway, storm water staff, and members of the local communities. The Monterey Regional Group submitted their initial MRSWMP and Notice of Intent to comply with the General Permit on March 4, 2003, prior to the August 8, 2003 due date. Water Board staff deemed the MRSWMP incomplete, made comments, and returned the MRSWMP to the Monterey Regional Group for revisions. This review-revision process was repeated several times until we arrived at a "final" version (which has since been revised), dated February 17, 2004. Water Board staff accepted the MRSWMP, and posted it on the State Board website for a 75 day public comment period which ended April 30, 2004. The 75 day posting was extended past the standard 60-day period to provide time to address points in one comment letter, in which the issues raised were resolved to the satisfaction of the letter's author.

During the February – April, 2004 posting, Water Board staff received seven (7) comment letters, several of which requested a Water Board hearing on the MRSWMP. The issue from one commenter was resolved, and the commenter withdrew his request for a hearing. Several of the other commenters also requested a hearing, and have not rescinded their requests.

In response to the third-party concerns, Water Board staff emailed and/or phoned each of the commenters to discuss the main points of their letters, and to set up a meeting between the commenters, the Monterey Regional Group participants, and Water Board staff. Additionally, representatives in surrounding Monterey-area cities were asked to attend the meeting as observers. Water Board staff held the meeting June 8, 2004, in the Monterey area. The agenda and summary points are included as Attachment 1 of this staff report.

The purpose of the June 8, 2004 meeting was to give the Monterey Group and the Water Board staff a venue to ask questions and clarify comment points with the commenters, and to attempt to reach consensus and revise the MRSWMP to satisfy all valid concerns.

At the closing of the June 8 meeting, the Monterey Regional Group agreed to withdraw the MRSWMP, and make revisions to reflect the main concerns raised at the meeting. The Monterey Regional Group re-submitted a draft MRSWMP, dated December 8, 2004. Water Board staff determined that the MRSWMP was complete, posted the document to the State Board website and emailed the document to all interested parties on December 10, 2004. The 30-day public comment period began on that date.

Water Board staff scheduled the December 10, 2004-version of the MRSWMP for the Board's February 2005 agenda. Additionally, there were four Cease and Desist Orders (CDOs) included with the MRSWMP February 2005 agenda item. Water Board staff combined the CDOs with the MRSWMP as one item due to storm water dischargers to designated Areas of Special Biological Significance. The State Water Resources Control Board (State Board) has designated 34 Areas of Special Biological Significance (ASBS) along the California coastline. These include Pacific Grove Marine Gardens and Hopkins Marine Life Refuge ASBS (ASBS No. 19), and the Carmel Bay ASBS (ASBS No. 34). The Ocean Plan prohibits waste discharges, including pollutants in storm water runoff, from entering the ASBS. Storm water runoff from the Cities of Pacific Grove and Monterey discharge to the Pacific Grove Marine Gardens Fish Refuge and Hopkins Marine Life Refuge ASBS (ASBS No. 19). Water Board staff proposed CDOs for these two ASBS-discharging entities, and intended to present the proposed CDOs for the Board's consideration at the same time the MRSWMP was presented. The CDOs, or another enforcement mechanism, are necessary to address the prohibited ASBS-discharges. Additionally, CDOs were drafted for the City of Carmel-by-the-Bay, and the Pebble Beach Company. Storm water runoff from these two entities discharges to the Carmel Bay ASBS (ASBS No. 34). City of Carmel-by-the-Sea and the Pebble Beach Company originally had submitted Notices of Intent for the Phase II Storm Water permit, and had joined with the Monterey Regional Group. Since the February meeting, the two entities have

rescinded their Notice of Intents, and have changed their status to one of voluntary participation in the MRSWMP.

Both the MRSWMP and the CDOs were postponed from the February 2005 Water Board hearing in response to multiple motions being filed the week prior to the February hearing. The motions were filed by Latham and Watkins, LLP, representing the Pebble Beach Company and the City of Carmel-by-the-Sea, and by the Natural Resources Defense Council (NRDC). Water Board staff, and many interested parties including those filing the motions determined that there was not enough time to review and respond to the voluminous information received during the week preceding the hearing.

In summary, the documents submitted by the two groups included:

1. Oppositions to the Monterey Regional Storm Water Management Program and the Cease and Desist Orders;
2. Motions for continuance;
3. Procedural objections, including objections to Designated Party status for any non-permittee;
4. Subpoenas;
5. Requests for Designated Party status from the Dischargers, environmental groups, several Farm Bureaus, and several golf associations; and
6. Requests for more time for preparation and document review by all parties.

Water Board staff responded to the submittals by providing copies of all non-privileged documents and e-mails to those entities requesting such, by keeping in constant contact via phone and email with interested parties in order to clarify areas of concern and discuss relevant points, and by conducting numerous conference calls between the Water Board management, staff counsel and staff, the Dischargers, and other interested parties. As a result of the ongoing dialog, all parties agreed to withdraw their subpoenas, and Water Board staff agreed to place the MRSWMP on the May 2005 Board meeting agenda as an item separate from ASBS-discharge enforcement. Water Board staff are

also examining whether Cease and Desist Orders are the best means of enforcement for any or all of the ASBS-discharging entities. Additionally, the Monterey Regional group made additional changes to the MRSWMP, primarily in response to the conference call conversations. The April 2005 MRSWMP and a summary of its revisions are posted to the Regional Water Quality Control Board website, <http://www.waterboards.ca.gov/centralcoast/Permits/Index.htm>.

On March 22, 2005, the City of Carmel-by-the-Sea submitted a "Small MS4 Permit Waiver Letter for Carmel-by-the-Sea" (Attachment 6), which outlined their arguments for not needing Storm Water Permit coverage. Water Board staff issued a response letter, dated April 14, 2005 informing the City of steps they would need to take to formally apply for an exception to the Phase II General Permit or an individual NPDES permit.

II. MONTEREY REGIONAL STORM WATER MANAGEMENT PROGRAM (MRSWMP) SUMMARY

The MRSWMP describes the organizational framework under which the participating entities will work together to accomplish the objectives of the program. It contains a description, and map, of the areas to be covered by the NPDES permit for which the program was prepared. It also describes Best Management Practices (BMPs) with justification for BMP choices, Measurable Goals, implementation timeframes, and implementing party(ies).

The purpose of the MRSWMP is to implement and enforce a series of BMPs. These BMPs are designed to reduce the discharge of pollutants from the municipal separate storm sewer systems to the "maximum extent practicable," to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act. The achievement of these objectives will be gauged using a series of Measurable Goals, which also are contained in the MRSWMP.

The BMPs are grouped under the following six “Minimum Control Measures” (MCMs), which are required under the Phase II regulations:

1. Public Education and Outreach
2. Public Participation/Involvement
3. Illicit Discharge Detection and Elimination
4. Construction Site Runoff Control
5. Post-Construction Runoff Control
6. Pollution Prevention/Good Housekeeping

The MRSWMP lists BMPs and Measurable Goals, which are included with this Staff Report as Attachment 2. This list was developed by the participating entities, using the comprehensive list of potential BMPs and Measurable Goals promulgated by EPA, and based on the Model Urban Runoff Program (MURP). The MRSWMP list contains those BMPs and Measurable Goals that the participants believe will be most useful and effective in reducing the discharge of pollutants from storm sewer systems within the particular geographic area and land uses covered by this permit.

III. DISCUSSION

The MRSWMP was originally placed on the February, 2005 Water Board agenda. The February 2005 Response to Comments prepared at that time, addressed many of the concerns of the interested parties. The majority of the February, 2005 Response to Comments are still relevant, however a few items were updated in that document to reflect the following changes:

1. The Pebble Beach Company and the City of Carmel-by-the-Sea have withdrawn their applications to the General Permit, and have changed their status to one of voluntarily upholding the MRSWMP; and
2. Water Board staff have withdrawn the Cease and Desist Orders for prohibited ASBS-

discharges, pending further consideration. The revised version of the February 2005 Response to Comments is included as Attachment 4 of this Staff Report.

This May, 2005 Staff Report has been updated from the February 2005 Staff Report, to reflect the history and updated staff recommendations for this item. The four main topics in this Discussion section reflect the primary concerns that remain between the commenters, the MS4s and Water Board staff.

A. General Permit Attachment 4 Design Standards (Supplemental Provisions)

The General Permit Attachment 4 Design Standards, also called “Supplemental Provisions”, establish minimum BMP requirements that stress (i) low impact design; (ii) source controls; and (iii) treatment controls. Attachment 4 Design Standards are not required for all Phase II entities. Attachment 4 Design Standards are:

1. Required for “areas subject to high growth or serving a population of at least 50,000”, and
2. May be required as additional criteria if sensitive water bodies exist¹. The Water Board may make the determination as to whether additional criteria are merited.

In the revised Response to Comments prepared for the February, 2005 Water Board hearing (Attachment 4 to this document), staff disagreed with commenters’ claims that Attachment 4 Design Standards should be required for the entire Monterey Regional group permitted area. However, since that writing, staff have determined that much of the MRSWMP urbanized areas discharge to either an ASBS or 303(d)² listed waterbody, which are both

¹ General Permit, Finding 10.d, pg. 3

² 303(d) list – Clean Water Act Section 303(d) list of Water Quality Limited Segments of waterbodies. Lists segments of waterbodies with

considered sensitive water bodies. Table 1, below, summarizes which of the MRSWMP urbanized areas have: a) high growth rates, and/or b) discharge to sensitive water bodies. High growth rate MS4s must comply with Attachment 4 requirements. Water Board staff recommend that MS4s discharging to an ASBS or a 303(d) water body also comply with Attachment 4

standards. Of the 12 urbanized areas (Monterey County is broken into 5 urbanized areas), all but Del Rey Oaks, and the Toro Park area of Monterey County are required or recommended that they be required, to meet Attachment 4 Design Standards. The Draft MRSWMP currently acknowledges only those municipalities subject to “Supplemental Provision E” (high growth rate MS4s) intend to follow Attachment 4. Water Board staff recommend the Water Board’s approval of the MRSWMP be conditioned on a revision to the MRSWMP that requires all dischargers/discharge areas other than Del Rey Oaks and the Toro Park area to implement Attachment 4 Design Standards.

identified impaired beneficial uses, the pollutants, and potential pollution sources causing the impairment.

Table 1						
Municipality	25% growth rate?	Discharge to ASBS?	Discharge directly to 303d listed waterbody?	303d listed due to Urban constituents ³	Attachment 4 required?	Attachment 4 recommended?
Del Rey Oaks	No	No	No		No	No
Marina	No	No	Yes	Metals, Pesticides		Yes
Monterey City	No	Yes (via Pacific Grove system)	Yes	Metals, pesticides		Yes
Pacific Grove	No	Yes	Yes	Metals, pesticides		Yes
Sand City	Yes	No	Yes	Metals, pesticides	Yes	
Seaside	No	No	Yes	Metals, pesticides		Yes
Monterey County urbanized areas:						
Castroville	yes	No	Yes	Fecal coliform, nutrients, sediment	Yes	
Pajaro	No	No	Yes	Fecal coliform		Yes
Prunedale	Yes	No	No		Yes	
Spreckles area	No	No	Yes	Fecal coliform, nutrients, pesticides, salinity, sediment		Yes
Toro Park area	No	No	No		No	No
Carmel River area	No	Yes	No			Yes

³ General Permit Fact Sheet, pg.3, 2.d, defines “sensitive water bodies” as including those listed as impaired due to urban runoff including BOD, sediment, pathogens, petroleum hydrocarbons, heavy metals, floatables, PAHs, trash and other constituents that are found in the MS4 discharge.”

B. ASBS Discharge Prohibitions

The General Permit is an NPDES permit, and thus allows permitted discharge within given conditions. Two of the MRSWMP MS4s⁴ are currently discharging both storm water and non-storm water runoff to ASBS's in violation of the California Ocean Plan. Originally, Water Board staff issued Draft Cease and Desist Orders (CDO) to address the prohibited discharges, and intended to bring both the CDO's and the MRSWMP to the February, 2005 Water Board hearing. In the week before the February hearing, the potential permittees raised significant concerns over the contents of the CDOs. Water Board staff and management concluded that it would be better to separate the MRSWMP from the enforcement actions and adopt the MRSWMP as soon as possible, so that BMP implementation and water quality protection could/would commence immediately.

Staff have notified the ASBS-dischargers and interested parties that enforcement will proceed, but staff and management may decide that a different form of enforcement (revised CDOs, Administrative Civil Liabilities, Notices of Violation, etc.) is more appropriate. Currently, staff and management are working with the dischargers and interested parties to determine the most appropriate and productive method to bring the dischargers into compliance with the Ocean Plan prohibition. The most feasible means of compliance appears to be a conditional exception to the prohibition. Only the State Water Resources Control Board (State Water Board) has the authority to grant an exception at this time. It is not known what conditions the State Water Board will require for an MS4 discharging to an ASBS.

⁴ The two ASBS-discharging MS4s are the Cities of Pacific Grove, and Monterey. Carmel-by-the-Sea and the Pebble Beach Company also discharge to an ASBS named Carmel ASBS.

C. Choice and Degree of BMPs Implementation

The Natural Resources Defense Council (NRDC) and the Richard Horner comment letters state that smaller communities around the nation are able to implement BMPs that meet Phase I Storm Water MEP, and exceed the BMPs called for in the MRSWMP. Water Board staff understand that the referenced communities voluntarily chose to join with adjacent or surrounding Phase I permittees during the early stages of Storm Water Phase I program implementation (pre-Phase II). In the beginning of the Phase I program, Phase I communities were also experimenting with BMP choice and applications; It took two to three permit iterations to evolve Phase I Storm Water Management Programs to the level we see today. We applaud the smaller communities that joined in with Phase I cities, but feel it is unreasonable to expect the Monterey Regional group to jump past the formative stages (which include developing funding mechanisms, and undergoing political and social paradigm shifts) to match the Phase I programs, particularly when there is no adjacent or surrounding Phase I permittee with a well-developed SWMP that they could join.

D. Specificity of the MRSWMP

Much written and oral discussion has centered around commenter's concerns that the MRSWMP is not detailed enough to allow a transparent review, versus the MRSWMP-authors' belief that the document is as specific as it realistically can be. Water Board staff believe the MRSWMP is detailed enough to allow a reasonable evaluation of its contents, and, in general, the MRSWMP meets and/or exceeds the Phase II General Permit requirements for all six Minimum Control Measures (listed above in Section II). This Discussion highlights examples from the MRSWMP that demonstrate the thoroughness of effort put forth by the Monterey Regional Group. These examples provide a glimpse of the information contained in the entire

document.

1. Minimum Control Measures (MCM) 1 and 2 – “Public Education and Outreach”, and “Public Participation and Involvement”

Appendix E and F of the MRSWMP provide 22 pages of detailed descriptions, examples, financial analysis, and programming of current and future public education, outreach and participation efforts (these appendices are at the end of this document and on our web site: <http://www.waterboards.ca.gov/centralcoast/Permits/documents/MRSWMP120804withAppendixDEF.pdf>). The appendices provide a wealth of information to any reader, including other communities that may be looking for examples and resources. The Monterey Regional Group is already implementing portions of these programs. Water Board staff believe the combined efforts of this group in the Public Education/Participation/Outreach area exemplify the intent and benefit that was originally foreseen by the State Board in allowing MS4 permittees to work together to meet MCM requirements.

The Monterey Regional Group MRSWMP requires several public outreach efforts that show a true effort at keeping the public informed, and taking public concerns into consideration. BMP 2-1.a and 2-1.b require the permittees to hold a public workshop prior to submitting the Annual Report, and to place the draft Annual Reports on a website preceding the workshop meeting. The information received from the public will then be used to keep the MRSWMP administrators accountable, to verify or refine the Annual Report content, and to guide the next year’s work plan that is submitted with the Annual Report. Most other entities allow a final Annual Report to be all the information that the public receives, and do not go to such efforts to solicit public input.

A second public workshop is scheduled each year with the primary purpose of educating target audiences as needed based on the Annual Report findings from the previous storm water year (BMP 2-1.c). This BMP demonstrates the responsiveness and

flexibility for tailoring the MRSWMP to meet needs as they are identified. By this and other means, the Monterey Regional Group has created a dynamic, applicable program, rather than a paper-exercise that merely meets regulatory requirements with limited ability to address new situations.

The Phase II General Permit does not have water quality sampling requirements (although the Water Board staff may require sampling as needed). However, BMP 2-2.d explains where the Monterey Regional Group has gone beyond the minimum requirements. The group continues to provide financial and other resources necessary to support volunteer water quality monitoring programs in the region. The group has accepted the responsibility to support the "Urban Watch" and "First Flush" monitoring programs. These two programs use volunteers to conduct sampling and analysis according to a Water Board approved quality assurance program plan, deliver data to the Water Board in a CCAMP-compatible format, have been reviewed by Water Board staff, and provide valuable data on water quality within the region. The previous water quality data collected by these and other programs was used by the Monterey Regional Group to decide what BMPs to include in the MRSWMP. Because the group is supporting the data collection efforts, and has used the data as a basis for BMP selection, it is logical to conclude that the group will continue to use the sampling data as a resource to tailor the storm water program to meet local needs. The collection and utilization of water quality data is the strongest argument demonstrating that the Monterey Regional Group has applied a genuine concern for water quality and the goals of the storm water program.

2. MCM #3 - Illicit Discharge Detection and Elimination

The MRSWMP BMPs 3-3, 3-4(all), and 3-6 (all) are examples of the detail that makes this MRSWMP a strong document. These BMPs spell out which industries and businesses are of high concern, and provide inspection and follow-through measures if illicit discharge is discovered. The Monterey Regional Group has demonstrated that they have applied

background or institutional knowledge to define the BMPs that are most applicable to their region. The group has also committed to inspect the businesses and industries required for inspection by Attachment 4 MS4s. This approach allows the Monterey Regional Group to target suspected problem areas from the outset. When the background knowledge is available, as in this case, this targeted BMP method is superior to the less expedient (but more common) approach of writing generic BMPs into a MRSWMP and modifying the BMPs if needed to finally reach a regionally-suitable BMP.

3. MCM #6 – Pollution Prevention/Good Housekeeping

BMP No. 6-4.b,c,d are very specifically written methods which Water Board staff believe exhibit the authors' forethought and dedication to the intent of the storm water permit. The Monterey Regional Group is in a unique situation in that some of the group members participated in creating the Model Urban Runoff Program (MURP)⁵, and therefore have extensive background knowledge that helps the group identify the most critical local pollutant sources and which potential BMPs would be most suitable and realistic for the locale. The group utilized their background knowledge to directly focus on known pollutants, and to use suitable BMPs. However, the group will be

⁵ The Model Urban Runoff Program (MURP) was completed in July of 1998. MURP is a comprehensive how-to guide developed for local governments to address the issues of polluted runoff in the urban environment. The MURP provides options to help small municipalities develop their own urban runoff programs for the Phase II process. The MURP was prepared by the City of Monterey, City of Santa Cruz, MBNMS, California Coastal Commission, Association of Monterey Bay Area Governments (AMBAG), Woodward-Clyde Consultants, and the Central Coast Regional Water Quality Control Board with money from a State 319 (h) grant. Many other local municipal agencies acted as peer reviewers throughout the development of the MURP through semi-annual meetings of the AMBAG Stormwater Task Force, now known as the Monterey Bay Stormwater Information Exchange. The Monterey Bay MURP has been used statewide as a resource for developing storm water programs.

continually collecting water quality data through the volunteer monitoring programs and soliciting public input at the two annual meetings, for the purpose of modifying BMPs to address problems as they arise or are better understood.

4. Sample Ordinances and Inspection Forms

In the April, 2005 MRSWMP version, Monterey Regional Group has provided sample ordinances and inspection forms, as well as flow charts describing program development and showing where specific BMPs will be incorporated in new programs. These revisions were a direct response to commenters' concerns regarding MRSWMP specificity. The additions allow reviewers to better comprehend the direction of the MRSWMP over the next five years.

Water Board staff and the Monterey Regional group recognize and acknowledge that there are numerous details to be worked out as the permittees implement this five year program. It is onerous, and beyond the intentions of the Phase II Storm Water permit to require that the permittees work through all of the details of a program that is intended and allowed by the permit to be developed and implemented over a five year term. The MRSWMP outlines which BMPs will be used, which years they will be implemented, why they were chosen (address pollutants of concern), and what the measurable goals are that demonstrate whether the BMP program components were accomplished. The permittees are required to submit a written Annual Report that provides analysis of the program, with BMP application and goal-achievement reporting required. The Monterey Regional group must also report and explain any changes they intend to make to the original MRSWMP, if they find that changes are necessary. All reports are public documents and will be held on file at the Water Board office. Additionally, the MRSWMP requires two publicly noticed meetings be

held in each of the five years of the permit. The first meeting of the year is to explain the Phase II permit objectives and solicit public input on the success of the BMPs and Measurable Goals. The second meeting will either target a general audience with the purpose of increasing overall awareness of the Phase II program, or will focus on a target audience and associated contaminants of concern, based on lessons learned from the preceding year.

Water Board staff, the wording of the General Permit, and direction from the EPA guidelines allow and encourage permittees to join together and create unified groups to meet permit requirements and carry out regional Storm Water Management Programs. However, having multiple permittees with varying population sizes and make-up, budgets, and water quality issues also contributes to the difficulty of providing intense detail in the MRSWMP. Collaborative efforts result in environmental benefits by producing natural resource-protection programs that cross political boundaries, addresses problems holistically, and use resources more efficiently. The quandary comes in that the MRSWMP must, by nature, be flexible enough to adapt to all the varying permittee's needs, yet be specific enough to meet the letter and the intention of the law. Water Board staff have explained why we believe the MRSWMP does meet the letter of the law (see Discussion section III.D, and February 2005 Response to Comments, Attachment 4 of this document). The intention of the Storm Water General Permit is to protect water quality through storm water management programs that are implemented over a five-year period. The General Permit intends for storm water programs to address and abate local pollutants of concern. Water Board staff offer the following examples to support our conclusion that the Monterey Regional group will implement BMPs and storm water programs to the degree necessary to protect and enhance storm water runoff quality:

a. The Monterey Regional group has shown consistent willingness to listen to the concerns of the commenters, and to amend the MRSWMP to meet specific comments whenever possible. When not possible to meet specific comments, the Monterey Regional group has provided their reasoning for rejecting the suggested changes.

b. This year, the Monterey Regional group began implementing significant portions of the Public Outreach and Public Participation BMPs, which required significant monetary expenditures (defined in the MRSWMP Attachment F), and was not yet required because permit coverage has not commenced.

c. The Monterey Regional group has, and continues to support water quality monitoring programs in their region. This action is a reflection of positive intentions, as water quality sampling results can be considered a "double-edged sword"; sampling results can be very useful tools for locating areas of successful pollution abatement, and also areas of ongoing or new pollutant sources. The latter information may be used constructively to find solutions, or destructively to point out faults.

d. The Monterey Regional group has worked diligently and collaboratively for over 4 years, in a public forum, to create and revise the MRSWMP. The authors of the MRSWMP are members of the communities, and employees of the agencies that will direct, implement and benefit from the BMPs. The authors have ownership and pride in the program, and are likely to make necessary efforts to see that the program requirements are implemented properly and effectively.

In summary, Water Board staff believe that the MRSWMP on the whole meets or exceeds MEP and the minimum requirements set forth in the Phase II General Permit, that there is ample evidence that the objective of the Monterey Regional group is to comply with the letter and the intent of the General Permit; and finally, that the level of detail in the MRSWMP is adequate for reviewers to understand and evaluate. The only significant

area of change recommended by Water Board staff is with regard to Attachment 4 areas of implementation, discussed above.

IV. SETTING AND DISCHARGE INFORMATION

Permit Boundary

The MRSWMP area boundary is shown on Figure 3-1 from the MRSWMP, included herein as Attachment 3, and described as follows:

For each incorporated city, the MRSWMP will be carried out throughout the area bounded by the city’s legal jurisdictional boundary, except within those areas over which the entity does not have jurisdiction. Such excluded areas include, but are not limited to:

- Federal Facilities including the U.S. Defense Language Institute, the U.S. Naval Postgraduate School and its facilities and housing areas, and the Ord Military Community at the former Fort Ord.
- School districts including the Pacific Grove, Monterey Peninsula, and Carmel Unified School Districts
- Colleges and universities including Monterey Peninsula College, California State University at Monterey Bay, and the University of California at Santa Cruz
- Miscellaneous other facilities including the Monterey Peninsula Airport and the Monterey Fairgrounds

From the above list, the schools and universities are required to obtain storm water permit coverage pursuant to the Phase II Storm Water Permit. The smaller miscellaneous facilities do not require coverage.

For the County of Monterey, the MRSWMP will be carried out in all of the unincorporated areas which have been designated by the U.S. Census Bureau as being “Urbanized Areas” and which are within the County’s legal jurisdictional boundary



Hydrologic Setting

The Monterey Regional Group is situated adjacent to Monterey Bay, and roughly bordered on the north by the Parajo River, and on the south by the Carmel River, in Monterey County (refer to Attachment 3). In addition to the Pajaro and Carmel Rivers, the larger surface water bodies flowing through the region include the Salinas River, and Alisal, Tembledaro, Moro Cojo, Espinosa, and Elkhorn Sloughs. All water bodies discharge to the Pacific Ocean.

Beneficial Uses

Storm water from the Monterey Regional Group municipalities’ jurisdictions discharges to the water bodies listed above. The beneficial uses of these water bodies include all of those listed in the Basin Plan⁶ with the exception of Industrial Process Supply, Hydropower Generation, and Inland Saline Water Habitat. The ultimate goal of the municipal storm water permit is to protect water quality for beneficial uses of receiving waters by implementing best management practices to the maximum extent practicable. The Phase II General Permit states,

Permittees must implement Best Management Practices (BMPs) that reduce

⁶ The beneficial uses for the Monterey Regional Group receiving waters include: Municipal and domestic supply, Agricultural supply, Industrial service supply, Ground water recharge, Water contact recreation, Non-contact water recreation, Wildlife habitat, Cold fresh water habitat, Warm fresh water habitat, Migration of aquatic organisms, Spawning, Preservation of biological habitats of special significance, Rare, threatened, or endangered species, Estuarine habitat, Freshwater replenishment, Navigation, Commercial and sport fishing, Aquaculture, and Shellfish harvesting.

pollutants in storm water runoff to the technology-based standard of Maximum Extent Practicable (MEP) to protect water quality. In accordance with 40 CFR section 122.44(k)(2), the inclusion of BMPs in lieu of numeric effluent limitations is appropriate in storm water permits.

IV. DISCHARGE CHARACTERISTICS

The Phase II General Permit, Findings No. 2, 3, 4 and 5 are as follows:

2. Pollutants of concern found in urban runoff include sediments, non-sediment solids, nutrients, pathogens, oxygen-demanding substances, petroleum hydrocarbons, heavy metals, floatables, polycyclic aromatic hydrocarbons (PAHs), trash, and pesticides and herbicides. (Finding No. 2)
3. During urban development, two important changes occur. First, where no urban development has previously occurred, natural vegetated pervious ground cover is converted to impervious surfaces such as paved highways, streets, rooftops, and parking lots. Natural vegetated soil can both absorb rainwater and remove pollutants providing a very effective purification process. Because pavement and concrete can neither absorb water nor remove pollutants, the natural purification characteristics of the land are lost. Second, urban development creates new pollutant sources as human population density increases and brings with it proportionately higher levels of vehicle emissions, vehicle maintenance wastes, municipal sewage, pesticides, household hazardous wastes, pet wastes, trash, etc., which can be washed into the MS4. As a result of these two changes, the runoff leaving a developed urban area may be significantly greater in volume, velocity, and/or pollutant load than pre-development runoff from the same area. (Finding No. 3)

4. A higher percentage of impervious area correlates to a greater pollutant loading, resulting in turbid water, nutrient enrichment, bacterial contamination, organic matter loads, toxic compounds, temperature increases, and increases of trash or debris. (Finding No. 4)
5. Pollutants present in storm water can have damaging effects on both human health and aquatic ecosystems. In addition, the increased flows and volumes of storm water discharged from impervious surfaces resulting from development can significantly impact beneficial uses of aquatic ecosystems due to physical modifications of watercourses, such as bank erosion and widening of channels. (Finding No. 5)

V. DISCHARGE PROHIBITIONS

Phase II General Permit Discharge Prohibitions read as follows:

1. "Discharges of waste that are prohibited by Statewide Water Quality Control Plans or applicable Regional Water Quality Control Plans (Basin Plans) are prohibited.
2. Discharges from the MS4s regulated under this General Permit that cause or threaten to cause nuisance are prohibited.
3. Discharges of material other than storm water to waters of the U.S. or another permitted MS4 must be effectively prohibited, except as allowed under Provision D.2.c, or as otherwise authorized by a separate NPDES permit."

VI. EFFLUENT LIMITATIONS

The Phase II General Permit reads,

1. "Permittees must implement BMPs that reduce pollutants in storm water to the technology-based standard of

- MEP.
2. Storm water discharges regulated by this General Permit shall not contain a hazardous substance in amounts equal to or in excess of a reportable quantity listed in 40 CFR Part 117 or 40 CFR Part 302.”

IX. COMMENTS

The Storm Water Management Plan was posted to the State Water Board website, http://www.swrcb.ca.gov/stormwtr/sm_municipal_swmp.html, and Regional Water Board website, <http://www.waterboards.ca.gov/centralcoast/Permits/Index.htm>, and a notice was electronically mailed on December 23, 2004, to all persons listed on the interested parties list in preparation for the February 11, 2005 Board meeting. Comments for both the MRSWMP and the proposed CDOs were due back to the Water Board by January 24, 2005. Comments and responses were posted to the Water Board website prior to the February 11, 2005 meeting. The Water Board staff Item 27 Supplemental Sheet Response to Comment that was posted to the February 2005 Water Board agenda site are still relevant, and is included as Attachment 4 of this report.

The MRSWMP and CDO hearings were postponed from the February 2005 meeting (discussed above), The MRSWMP was re-posted and the May 12-13, 2005 Board Hearing Notice directed that public comments be submitted by March 30, 2005. Water Board staff received eight letters in response to the March 2005 request for comments; the letters are posted on the Regional Water Board website at <http://www.swrcb.ca.gov/rwqcb3/Permits/Index.htm>. The eight letters received included one from the Monterey Regional group (Attachment 5). The Monterey Regional group responded to several key points raised by the commenter's earlier (pre-March 2005) letters. Water Board staff believe the Monterey group's letter provides an accurate and fair response to the points raised. In summary, the letter addresses the issues of Maximum Extent Practicable (MEP) standards

as they apply to the highly-variable Monterey Regional group, the 5-year timeline for implementation, and the claim that the permit-area contains a population of over 400,000.

Five of the eight letters joined with the April 16, 2004 and January 10, 2005 Natural Resources Defense Council (NRDC) and Dr. Richard Horner letters, and added no additional specific comments. Water Board staff have addressed these earlier comments in the February 2005 Response to Comments. These letters are available for review at the Water Board office.

The remaining two March 2005 comment letters primarily focused on the items addressed in the Discussion, Section III of this report, and the February 2005 Response to Comments.

The California Coastal Commission March 2005 letter (Attachment 5), and discussions with other comments have highlighted one additional area of concern. The MRSWMP calls for, and reviewers are concerned with, the need for comprehensive storm water ordinances, and regional design standards for new and re-development to protect the quality of storm water runoff. The MRSWMP contains BMPs (3-5.a, 4-1.a, and 5.1.a) which require ordinance(s) that will address all aspects of storm water pollution prevention related to illegal disposal, construction, and new and re-development activities. Additionally, the April 2005 MRSWMP version contains model ordinances. The model ordinance will be the draft template for each Monterey group permittee to modify and use to meet the BMP requirements. This model should give the Water Board staff and commenters a better understanding of the ordinances that will be adopted over the course of the permit term. Additionally, it should be emphasized that all ordinances will go through the normal public notice and hearing requirements prior to adoption by the local jurisdiction. Water Board staff and the public will have ample opportunity to comment on ordinances at those times. It is

unreasonable to overly criticize the Monterey Regional group for not including actual draft ordinances at this time, when it is necessary for the drafts to go through the public review process prior to adoption by the permittees. The Water Board can also review the ordinances in a public hearing, although the MRSWMP and General Permit currently do not explicitly require this.

The Natural Resources Defense Council (NRDC) sent an email on March 22, 2005 to its constituents urging them to speak up against the MRSWMP, and email a form letter (Attachment 5) which was provided by the NRDC, or a custom letter to Water Board staff. The email was not sent directly to the Regional Water Quality Control Board staff, however a copy of it was forwarded to us, and is included in Attachment 5. The email message incorrectly categorizes the MRSWMP as a rubber-stamped, weak clean-up plan that ignores cost-effective BMPs used in other cities. In truth, Water Board staff have been working with the Monterey Group for over 4 years during their development of the MRSWMP. Water Board staff have required numerous revisions to the MRSWMP, and have compared BMPs proposed by the program with BMPs in other Storm Water Management Programs submitted in Region 3, and to the EPA's Guidelines posted on the State Board website. Staff believe that the NRDC email misleads the public and ignores the facts of the process behind the MRSWMP production, its contents, and the positive impacts on water quality that are expected with BMP-implementation required by the MRSWMP. The email contained a form letter response which Water Board staff believe reflects a highly biased and misinformed understanding of the MRSWMP.

Save Our Shores also emailed their constituents urging letters be sent rejecting the MRSWMP (Attachment 5). The concerns voiced in the email have been addressed in this Staff Report and the

February 2005 Response to Comments.

X. PUBLIC HEARING

The Water Board will hold a public hearing to consider enrolling the Monterey Regional Group in the Phase II Storm Water Permit. The public hearing is scheduled to be held on May 12-13, 2005, in Watsonville, California. Exact location address and Water Board hearing agenda will be posted to the Water Board website, <http://www.waterboards.ca.gov/centralcoast/>. Further information regarding the conduct and nature of the public hearing concerning this draft order may be obtained by writing or visiting the Central Coast Regional Water Quality Control Board office, at 895 Aerovista Place, Suite 101, San Luis Obispo, CA 93401, attention Donette Dunaway, (805) 549-3698, or ddunaway@waterboards.ca.gov.

XII. RECOMMENDATIONS

Accept the December 2004 Monterey Regional Storm Water Management Program as complete, and approve Monterey Regional Group enrollment in the Phase II General Permit if the following recommended change are made:

1. Monterey Regional Group MS4s urbanized areas discharging to an ASBS, or a 303(d) water body shall implement Phase II Storm Water permit Attachment 4 Design Standards. "Urbanized Areas" are defined in the MRSWMP and are taken from the U.S. Census data.
2. The MRSWMP should list the actual MS4s or MS4 areas that are required to apply Attachment 4 Design Standards.
3. The MRSWMP section titled "Areas of Special Biological Significance" should be amended to state that the

- Cities of Monterey and Pacific Grove are discharging to ASBS No. 19, "Pacific Grove Gardens Fish Refuge and Hopkins Marine Life Refuge" ASBS.
4. The MRSWMP must clearly state that high growth urbanized areas must apply Attachment 4 Design Standards. "High growth" is defined by the Permit as areas which have experienced more than 25% population growth over years 1990 – 2000, or are expected to grow more than 25% from 1999 – 2009.
 5. The MRSWMP must be amended to include all necessary steps to meet Attachment 4 Design Standards within the five year permit term.
 6. The MRSWMP must require the Annual Report to include:
 - Work plan for upcoming year;
 - Each individual MS4's activities and successes;
 - A description of the mechanisms used to ensure the MRSWMP is being implemented, maintained, and/or functioning as planned;
 - Overall regional success in protecting water quality through SWMP implementation.
 7. The following changes be made to the Measurable Goals (MG) category of the following BMPs:
 - BMP 5-1.c – MG should read, "Date guidance document adopted and implemented by permit holder."
 - BMP 6-4.c and d – MG as worded is not quantifiable or reportable. Revise MG to reflect a method of objective reporting.

8. Revise BMP 6-6.a measurable goal from "determined schedule appropriate for each MS4" to (a) goal(s) which include(s) units of measurement (i.e. "X" times per month, or miles/month) used each year, OR add a requirement that the Annual Work plan will provide numerical goals for each MS4.

XIII. ATTACHMENTS

The Attachments to this Staff Report have been provided in hard copy for the Board Member packets. All other reviewers are directed to the Water Board website, <http://www.waterboards.ca.gov/centralcoast/Permits/Index.htm> to see Attachments, or may reach Donette Dunaway at the above-listed contact to arrange a document review in person at the Water Board offices.

1. MRSWMP Commenter's June 8, 2004 Agenda and summary points
2. MRSWMP BMPs and Measurable Goals Table 4
3. Monterey Regional Storm Water Management Program area boundary map.
4. February, 2005 Response to Comments for Monterey Regional Storm Water Program (Updated Supplemental Sheet for Item 27, February 2005 Water Board hearing)
5. March 2005 comment letters:
 - Monterey Regional Group response to comments
 - California Coastal Commission
 - NRDC email solicitation and form letter sent to constituents only
 - Save Our Shores email solicitation sent to constituents only
6. Small MS4 Permit Waiver Letter for Carmel-by-the-Sea

Also please see the April 2005 MRSWMP and a summary of it's revisions at the

Regional Water Quality Control Board
website,

[http://www.waterboards.ca.gov/centralcoast/
Permits/Index.htm](http://www.waterboards.ca.gov/centralcoast/Permits/Index.htm)

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