

Water Board Staff Response to Comments found in *A Practical Plan for Pollution Prevention – Urban Runoff Solutions for the Monterey Region*

The following are response to comments summarized from the Natural Resources Defense Council and Ocean Conservancy report titled “A Practical Plan for Pollution Prevention – Urban Runoff Solutions for the Monterey Region.” The report compares the Monterey Regional Storm Water Management Plan (MRSWMP) to BMPs used in Morgan Hill, Napa County, Placer County, Salinas, San Bernardino County, San Diego County, San Joaquin County, San Francisco Public Utilities Commission, Solano County, the Model Urban Runoff Program, and Griffin, GA.

The Monterey Regional Storm Water Permit Participants Group submitted responses to the *Practical Plan* on December 15, 2005. Staff has reviewed the Participants Group’s responses and concurs with those responses.

Comments:

- 1. The Draft Monterey Proposal must assure that the programs are “designed to reduce the discharge of pollutants ... to the MEP.”**

Response: The MRSWMP includes those BMPs that the Monterey Regional Group determined could be obtained, installed and/or implemented (technically feasible) and that would produce pollutant reduction benefit that justifies the implementation cost (economically feasible). The Monterey Group utilized storm water quality data from the region, applied knowledge and observations from watchdog groups and internal municipal staff, and determined the likely pollutants of concern and probable best methods to address the pollutants, to arrive at the list of BMPs included in the MRSWMP. With the additions listed in the Resolution, staff agrees that these BMPs satisfy the MEP standard.

- 2. The Draft Monterey Proposal must assure that the program, when implemented, will assure that discharges do not cause or contribute to a violation of an applicable water quality standard.**

Response: The MEP standard does not require strict compliance with water quality standards. The General Permit requires dischargers to comply with Attachment 4 receiving water limits through an iterative process. The Permit states: “the receiving water limitations in this General Permit do not require strict compliance with water quality standards, but instead require compliance with water quality standards over time, through an iterative approach requiring improved BMPs.” Other than Attachment 4, the Permit does not include receiving water limits, except that the Executive Officer must require additional controls on non-storm water discharges that contribute to an exceedence of water quality standards.

The Water Board can require more stringent standards than MEP if necessary. (*Building Industry Association of San Diego v. State Water Board* (2004) 124 Cal.App.4th 866.) In

order to impose receiving water limits, i.e., to assure that the Discharger does not cause or contribute to an exceedence of water quality standards, the Water Board would have to adopt an individual permit, rather than approve the Notice of Intent. However, *Building Industry Association* does not require all Phase I or Phase II permits to include effluent or receiving water limits. Since this is a first-iteration permit, staff is not recommending more stringent limits at this time (with the exception of requiring ASBS dischargers to comply with Attachment 4). The State Board decided not to require these more stringent standards when it adopted the MS4 Phase II General Permit ("MS4 Permit" or "General Permit"), except for "Attachment 4" MS4s, and the Phase II regulations do not require them.

3. The Draft Monterey Proposal must explicitly incorporate Receiving Water Limitations language in Attachment 4 for all municipalities.

Response: Attachment 4 is only required for certain municipalities and urbanized areas within the permit boundary. The MRSWMP does list the Attachment 4 requirements, but should list the communities that will be required to implement those requirements. Water Board staff will recommend to the Board that the MRSWMP include a list of municipalities that must comply with General Permit Attachment 4 requirements.

Castroville, Prunedale, and Sand City are automatically required to comply with Attachment 4. Water Board staff recommend to the Board that the City of Pacific Grove and the City of Monterey comply with Attachment 4 requirements because they discharge to an ASBS. The remaining municipalities are not required to implement Attachment 4.

Attachment 4 of the MS4 Permit applies to MS4s that serve a population of 50,000 or more and/or have had 25% or more population growth over 10 years. Attachment 4 does not apply to MS4s that serve a population of less than 50,000 or that do not meet the 25% growth criteria, even if the MS4 happens to be located in a county or metropolitan area that meets the population or growth thresholds. In fact, *all* small MS4s located in an urbanized area of 50,000 or more must obtain permit coverage. (40 CFR 122.32(a)(1); see EPA 833-F-00-00, Jan. 2000, Fact Sheet 2.1, *Who's Covered?*, at <http://www.epa.gov/npdes/pubs/fact2-2.pdf>; and EPA 833-F-00-004, Dec. 1999, Fact Sheet 2.2, *Urbanized Areas: Definition and Description*, at <http://www.epa.gov/npdes/pubs/fact2-2.pdf>.) Based on the commenter's analysis, all automatically-designated small MS4s would be subject to Attachment 4. This is not the case. (See General Permit, Attachment 5.)

State Water Resources Control Board (State Board) and the Water Board staff utilized the U.S. Census data within the "urban clusters" of Monterey County to determine which segments of the County needed permit coverage. This designation process is specified in the permit. Thus, it is inappropriate to cite the entire Monterey County population as justification for requiring Attachment 4 provisions.

The commenter cites the existence of the Monterey Regional Water Pollution Control Agency (MRWPCA) as evidence for the interconnectedness of the storm water system

across the region. The MRWPCA handles wastewater, not storm water (see <http://www.mrwPCA.org/html/mission.html>). The Phase II Storm Water program does not concern wastewater systems, therefore the interconnectedness of MRWPCA does not have a bearing on the Phase II designation.

The MS4 Permit distinguishes between a Permittee and co-permittees. Nothing requires the Regional Board to apply these standards to all co-permittees in the aggregate. Only those co-permittees that meet the Attachment 4 standards, must comply with Attachment 4. Any other interpretation of these standards would discourage smaller cities from participating in a regional SWMP, with the net result that fewer resources are available both for the regional SWMP and the smaller cities' programs. The MRWPCA operates the wastewater treatment system, not the storm drain system, and therefore was not designated as a Phase II permittee, and has no bearing in the argument of a unitary MS4 system. Each MS4 installs, operates, and maintains their own storm water system. Although surface water may flow from one municipality to another depending on topography, the systems are not interconnected by design. The Phase II Permit Finding 10.c discusses interconnected systems, but the discussion focuses on whether a contributing entity must be designated for permit coverage. The purpose of Finding 10.c has no discussion of determining whether interlinked systems would result in Attachment 4 applicability. The Phase II permit does not suggest that if there are significant contributors (per the 10% contribution rule described in Finding 10.c), then the populations of the two or more MS4s would be added together; doing so could theoretically push an entire locale from the Phase II permit and into Phase I permit criteria. Both the Phase I application requirements and the Phase II regulations are clear that interconnected MS4s do not become a single MS4. (see e.g. 40 CFR 123.35(b)(4), (d)(1)(i).)

Water Board staff did examine storm drain maps to determine whether one MS4 discharged to another MS4 when considering the ASBS-discharge issue. Judging from contributing land mass, the actual flow from the City of Monterey to Pacific Grove is likely less than 10% (refer to Phase II Permit Finding 10.c), however Water Board staff determined that the City of Monterey is contributing to the ASBS-discharge.

4. The draft Monterey Proposal must assure that the program reflects baseline provisions set forth in other SWMPs or the MURP.

Response: The Permittees are required to develop a storm water management plan (SWMP) that describes how pollutants in storm water runoff will be controlled using BMPs that address the six minimum control measures. The MRSWMP provides BMPs that will be used to control pollutants in storm water. They are not required to implement a range of BMPs in use in similarly situated communities or the MURP.

The commenter incorrectly implies that there is a standardized set of BMPs that are being used across the state or country in "similar" cities, and that the governmental documents are tailored such that an MS4 could pick one set of unified standards and apply them to meet MEP. This is not the case. As the General Permit Fact Sheet MEP discussion

describes, the MEP “standard” is very individualized and is very dependent upon local factors. What is applicable for one city, may be entirely unreasonable or ineffective in another similar sized city, due to geography, soils, rainfall, public perception, water quality variations, cost-benefit tradeoffs and so on. The Monterey Regional Group, in developing the SWMP, chose applicable and feasible BMPs from the model programs and documents.

The MRSWMP includes those BMPs that the Monterey Regional Group determined could be obtained, installed and/or implemented (technically feasible) and that they could afford and would produce pollutant reduction benefit that justifies the implementation cost (economically feasible). The Monterey Group utilized storm water quality data from the region, applied knowledge and observations from watchdog groups and internal municipal staff, and determined the likely pollutants of concern and probable best methods to address the pollutants, to arrive at the list of BMPs included in the MRSWMP. Staff believes these BMPs satisfy the MEP standard because the BMPs address the areas pollutants of concern, the BMPs have been proven to be effective and feasible in other communities, and the cost of the BMPs is justified by the expected pollutant removal capabilities.

In addition, the mere fact that other municipalities have implemented particular BMPs (or suites of BMPs) does not mean those BMPs are required in order to meet the MEP standard. “Maximum extent practicable” is a term of art that should not be interpreted by using dictionary definitions of the term “practicable”. (*Building Industry Assn. of San Diego v. State Water Bd.* (2004) 124 Cal.App.4th 866, 888.)

5. The draft Monterey Proposal must include a section addressing priority pollutants of concern.

Response: Starting on MRSWMP page 4-11, pollutants of concern are discussed including data from first flush sampling.

6. The draft Monterey Proposal must schedule its BMP implementation using monthly, rather than just yearly, timeframes.

Response: The program will be implemented over a five-year period and effective implementation will be evaluated on an annual basis. Water Board staff would like to see resources expended on proper BMP implementation rather than tracking and attempting to meet arbitrary monthly deadlines.

7. The draft Monterey Proposal must address ASBSs.

Response: The ASBS issue will be handled through enforcement action. The MRSWMP discusses ASBSs starting on page 3-4, and indicates that the communities that discharge into ASBSs will work with the State Water Board and Central Coast Water Board to deal with the issue. Dischargers into ASBS must either obtain an exception as

allowed by the Ocean Plan, comply with a general statewide exception if the State Water Board adopts one, or stop discharging.

- 8. The draft SWMP must be more specific about “the audience,” and must broaden its education plan to include actions targeted to specific audiences, rather than “all ages, classes, and ethnic groups.”**

Response: For the first permit cycle, it is appropriate for the MRSWMP to target a broad audience to provide overall storm water quality educational materials. Once the program is in place for a few years it would be beneficial for the group to target audiences that may have a greater impact on water quality. It may take several years to figure out the audiences that are responsive to broad educational program and the ones that are not and may require a more targeted campaign.

- 9. The draft SWMP must include an educational component targeted specifically toward tourists.**

Response: The education and outreach program targets a wide audience. Although they do not specifically target tourists, the program includes advertising with a high probability of reaching tourists such as print media, bus ads, movie ads, and radio ads. Additionally the target audience identified in the MRSWMP was chosen based on an analysis of the source of pollutants of concern.

- 10. The topics covered in the educational program must be revised to be broader in scope.**

Response: The proposed educational program does include a broad group of topics, such as reducing pollution from lawn and gardening activities, improper disposal of household hazardous waste, illegal disposal activities, pet wastes, improper handling and disposal of trash, restaurant activities, and automotive activities.

- 11. The SWMP must provide a mechanism to adapt its educational program in the future.**

Response: BMP 1-1.b provides for review and revision of previous year public education and outreach program to maximize efficiency in audience reached and address current contaminants impacting water quality. This review will occur in years 2-5 of the program.

- 12. The SWMP must include a detailed Public Education and Outreach program for years 1 – 5, rather than just year 1.**

Response: The MRSWMP includes a Public Education and Outreach program for all 5 years of the program including reviewing the program effectiveness on an annual basis.

13. The SWMP must include detailed Public Participation and Outreach Program that covers the entire permit term.

Response: The program provides for two workshops annually for the life of the permit. All of the Public Participation and Outreach programs are scheduled annually for the duration of permit coverage.

14. The objectives of the Public Participation and Outreach Program should be reoriented toward program development and implementation, rather than education.

Response: The program provides for two workshops annually for the life of the permit. The workshops provide an opportunity for the public to participate in program evaluation and planning. One of the workshops will concentrate on the annual report. The annual reporting process involves evaluating program successes and failures and determining future program needs.

15. The draft annual report must be posted on the website and in city offices at least one month prior to the first workshop.

Response: BMP 2-1.a indicates that the annual report will be posted on the website and in city offices one month prior to Annual Workshop No. 1.

16. Public Workshop #2 must provide an opportunity for the public to provide mid-year input on the status of the program and the effectiveness of BMPs.

Response: Workshop #2 is scheduled for March/April which can provide opportunity to evaluate program effectiveness from the previous rainy season.

17. The BMP must be revised to include mechanisms for engaging the general public in these activities, in addition to providing financial support.

Response: MRSWMP BMP 2-2.d indicates the Monterey Regional Group will provide support for, or assistance with volunteer monitoring programs such as Urban Watch, First Flush, and Snapshot Day.

18. The SWMP must provide for the development of watershed steward programs, and the establishment of a Citizen's Advisory Committee on storm water issues.

Response: The Monterey Regional Group will provide support for, or assistance with existing watershed steward programs such as Urban Watch, First Flush, and Snapshot . There is already an established Citizen's Advisory Committee in the Monterey area. The Monterey Regional Group will have a representative participate in that committee.

- 19. The illicit discharge hotline must include an explicit commitment to respond to and eliminate 100% of all illicit discharges and/or connections detected as a result of the call-in program.**

Response: The measurable goal for BMP 3-1.c is 100% of all reports of illicit discharges will be investigated and reports on outcome of cases.

- 20. The SWMP must include the requirement that permittees report on the use of the hotline in their annual report.**

Response: The permittees are required to submit an annual report that includes the status of compliance with permit conditions, an assessment of the appropriateness and effectiveness of BMPs, and the status of identified measurable goals. The required information will cover the hotline use. The permittees are not required to include reporting requirements in the MRSWMP.

- 21. The SWMP must require the completion of the storm drain map within year 1.**

Response: The permit does not require permittees to complete storm drain mapping within the first year of permit coverage. The MRSWMP proposes completing storm drain system mapping by the third year of permit coverage.

- 22. The SWMP must promptly complete its inventory according to the timeframe discussed in the "Inspection of Existing Development" section, below. (Refers to inventory of businesses and industry to be monitored for illicit connections and/or discharges.)**

Response: The MRSWMP includes an inventory of businesses within the permitted area starting on page E-29.

- 23. The SWMP must include a requirement for prioritizing those businesses that are known, from observation in the municipality or from other programs, to result in illicit discharges.**

Response: The MRSWMP contains plans (BMP 3-3.b) to prioritize and inspect businesses for illicit discharges.

- 24. The SWMP must contain a commitment to inspect a minimum of 20% of inventoried businesses annually.**

Response: The MRSWMP commits to 5% of businesses inspected annually. The Monterey Regional group will start with this percentage of businesses as a minimum. They will re-evaluate the number of businesses inspected once they better understand the resources required to complete the inspections.

- 25. The SWMP must include a program of field investigation.**

Response: The MRSWMP includes requirements to inspect businesses, catch basins, and drain inlets. BMP 3-1.c calls for investigating and taking action on each illicit discharge report received.

26. The SWMP must include a program for monitoring the entire municipal storm sewer system.

Response: The Monterey area currently has monitoring programs in place with the help citizen groups. The MRSWMP includes plans to provide financial assistance and support for Urban Watch, First Flush, and Snapshot Day.

27. The SWMP must explicitly provide for follow-up investigation for any monitoring that suggests the presence of illicit discharges or connections.

Response: BMP 3-1.c requires Monterey Group members to investigate and take action on each report of illicit discharge that is received using the protocols on page E-23.

28. The SWMP must contain commitments by the permittees to respond to all sewage spills from all sources, and prevent the entry of sewage into the MS4.

Response: The Monterey Regional group have permits for their sanitary sewer system requiring sewage spill response and spill mitigation.

29. The SWMP must complete its review of existing storm water ordinances for compliance with Phase II requirements prior to the approval of the SWMP.

Response: The General Permit does not require permittees to evaluate ordinances prior to permit coverage. Monterey Regional group members will review existing ordinances prior to adoption of new ordinances to avoid conflicts, but they are not required to do this prior to SWMP approval.

30. The SWMP must adopt a template ordinance, based on existing templates, and modify it to be municipality-specific within the first year of permit coverage.

Response: Starting on page E-65, the MRSWMP includes a proposed draft ordinance for member entities to adopt within the first year of permit coverage.

31. The SWMP must immediately develop a policy outlining what discharges are permitted into the MS4 and what discharges will be considered illicit.

Response: A guidance document for policies and procedures pertaining to illicit connections and illegal discharges to storm water systems is included on page E-61.

32. The SWMP must supplement its educational efforts with mechanisms to facilitate proper waste disposal to meet MEP and water quality standards.

Response: MRSWMP page 4-16 indicates that all of the communities support household hazardous waste programs. The Monterey Regional Waste Management District, which covers all of the member agencies, runs a full-time household hazardous waste drop-off center free of charge to residents of the district.

33. The BMP intent must state that the Monterey entities will develop and implement a program to reduce pollutants to the MEP and assure compliance with water quality standard through implementation components.

Response: MRSWMP page 4-1 states that the Monterey Group will implement and enforce a program designed to reduce the discharge of pollutants from municipal storm water to the maximum extent practicable.

34. The draft Monterey Proposal must adopt a template ordinance, based on existing templates, and modify it to be municipality-specific within the first year of the Monterey Proposal's adoption.

Response: Page E-65 of the MRSWMP contains a model ordinance that will be revised to be municipality-specific within the first year of permit coverage.

35. The SWMP must: 1) inventory existing construction projects; 2) require specific construction site BMPs; and 3) designate additional BMPs based on review of EPA's Menu of BMPs that are MEP and assure compliance with water quality standards.

Response: The MRSWMP is not required to include a construction site inventory. However, the Monterey Regional Group will have to track construction projects disturbing one acre or more, within their jurisdictions. The MRSWMP includes construction site BMPs starting on page E-80. The construction site BMPs will be required to be implemented through the ordinances that will be adopted in permit year 1.

36. The SWMP must develop a construction and grading review/approval process of construction plans to ensure that pollutant discharges be reduced to the MEP and assure compliance with water quality standards.

Response: MRSWMP contains construction site plan review and inspection procedures on page E-108.

37. The SWMP must develop and implement a construction site inspection program that meets MEP and assures compliance with water quality standards.

Response: MRSWMP contains construction site plan review and inspection procedures on page E-108.

38. The SWMP must require entities develop and implement within the first year of the SWMP adoption, a construction education program for project applicants, contractors, developers, property owners, and other responsible parties.

Response: The MRSWMP includes public education and outreach material for the construction industry. The Water Board provides annual workshops for construction permit compliance.

39. The SWMP must specify that required contents of a municipal ordinance or other document to ensure implementation of design standards.

Response: Attachment 4 design standards are included in Appendix E on page E-94.

40. The SWMP must specify the procedures for review of construction plans.

Response: Procedures are included on page E-108.

41. The SWMP must require self-certification.

Response: Self-certification requirements are included on page E-93.

42. The SWMP must provide for inspections commencing immediately upon the implementation of the ordinances.

Response: BMP 4-3.b provides that all construction sites will be inspected annually.

43. The SWMP must, under the good housekeeping and pollution prevention for municipal operations, revise the BMP intent to explicitly refer to municipal operations.

Response: The BMPs themselves refer to municipal operations. The General Permit does not require permittees to include BMP intent in SWMPs. The fact that the BMPs themselves refer to municipal operations fulfills the General Permit requirements.

44. The SWMP must commit to training specific categories of employees, including – at minimum – those referred to in the MURP.

Response: The MRSWMP pages F-21 and F-22 list employees targeted for training.

45. The SWMP must be revised to include specific hazardous material storage BMPs recommended by the MURP, and require that these be incorporated into an ordinance, to be adopted in year 1 of the program. Compliance with this ordinance should be an express requirement of the SWMP.

Response: The MEP standard does not necessarily require an ordinance for hazardous materials storage BMPs. The MRSWMP contains requirements for municipal employee

training. The training includes BMPs for reducing pollution from municipal activities, which include hazardous materials use and storage. The MRSWMP also requires correction of deficiencies noted by the CUPA.

46. The SWMP must provide for a program for disposal of used motor oil to be developed and implement within the first year of the permit.

Response: BMPs 6-3.a and 6-3.b specifically involve proper disposal of used motor oil and filters.

47. The SWMP must incorporate additional landscaping and lawn maintenance BMPs as recommended by the MURP.

Response: General training is listed as BMP 6-1.a, but the MRSWMP should include plans to expand the training program beyond irrigation practices to include vegetative cover requirements, proper use of mulch, and pollution prevention measures for landscape maintenance activities. Water Board staff will recommend to the Board that the MRSWMP include information regarding overall good landscaping and lawn care practices in employee training. BMP 6-4.a includes irrigation runoff control procedures and BMP 6-4.b includes protocols for pesticides use.

48. Explicit procedures for dechlorination and debromination of pool water should be incorporated into the SWMP and applied within the first year of the permit.

Response: BMP 6-5.a includes procedures for proper disposal of swimming pool water.

49. The SWMP must provide some sort of commitment with respect to the frequency and timing of street sweeping, as well as what criteria will guide the determination of priorities for street sweeping. Furthermore, the SWMP should contain more comprehensive street sweeping program that should commit to providing access for sweepers, equipment maintenance, and procedures for disposal of waste collected.

Response: The MRSWMP includes scheduled street sweeping for the member communities starting on page E-155.

50. The SWMP must incorporate additional BMPs for automotive activities, as recommended by the MURP.

Response: BMPs 6-7.a-f include vehicle maintenance pollution prevention activities including the training of all employees repairing municipal vehicles on proper pollution prevention techniques. An inspection checklist is included on page E-53, which includes the details listed in the Model Urban Runoff Program (MURP).

51. The SWMP must incorporate additional BMPs for municipal vehicle washing, as recommended by the MURP.

Response: Training of municipal employees in proper vehicle washing techniques is included as BMP 6-8.a. The MRSWMP also contains BMP 6-8.b which calls for annually inspecting vehicle washing facilities utilizing the checklist on page E-57, which includes the details listed in the MURP.

52. The SWMP must include a program of maintenance of the MS4 that includes key components from the Salinas Permit, MURP, and San Diego Permit.

Response: The Salinas and San Diego Permits are Phase I permits in their second or third iteration. MRSWMP BMPs 6-10.b and 6-10.c include inspection of inlets and catch basins and cleaning prior to rainy season. BMP 6-10.e includes the implementation of a storm drain inspection and cleaning program.

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