



Protecting and Restoring the Santa Barbara Channel and Its Watersheds

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August 9, 2007

Brooks Firestone, Chair
and Board of Supervisors
Santa Barbara County
105 East Anapamu Street
Santa Barbara, CA 93101

Re: Storm Water Runoff Control Ordinance

Dear Chair Firestone and Supervisors:

As you know, Santa Barbara County now has an approved Storm Water Management Program (SWMP), which constitutes the County's coverage under the State General Permit for the Discharge of Storm Water from Small Municipal Separate Storm Sewers (General Permit). Pursuant to the General Permit and the SWMP, the County is now required to reduce the discharge of pollutants to the Maximum Extent Practicable to protect water quality, satisfy relevant Clean Water Act requirements, and ensure that discharges do not cause or contribute to exceedences of water quality standards.

Pursuant to the legally binding SWMP, the County was required to adopt and enforce an ordinance to effectively prohibit non-storm water discharges into the storm sewer system, with appropriate enforcement procedures and actions, in Year 1 of its five-year SWMP, which ended on June 30, 2007. Because the County has not yet adopted this ordinance, it is currently in violation of its SWMP. In light of this legal exposure and the fact that the ordinance has been languishing in draft form for more than three years now, it is imperative that the Board adopt and enforce this ordinance immediately.

Channelkeeper has some specific recommendations regarding the text of the draft ordinance, as follows.

Sec. 29-49 Requirement to Prevent, Control and Reduce Storm Water Pollution

(a) "The Public Works Director shall adopt requirements identifying appropriate Best Management Practices to control the volume, flow rate, and potential pollutant load of storm water runoff from residential, commercial, or industrial activities and processes carried on within the unincorporated area of the county, as may be appropriate to minimize the generation, transport and discharge of pollutants."

With regard to this sub-section, Channelkeeper recommends the deletion of the qualifier "as may be appropriate to minimize the generation, transport and discharge of pollutants" and its replacement with the following text:

which may cause or contribute to pollution or contamination of storm water, the storm drain system, or waters of the United States. The owner or operator of a commercial or industrial establishment shall provide, at the owner's own expense, reasonable protection from accidental discharge of materials or other wastes into the storm drain system or watercourses through the use of structural and non-structural BMPs. Further, any person responsible for a property or premise, which is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the municipal separate storm sewer system. Where BMP requirements are promulgated by the County or any federal, State of California, or regional agency for any activity, or water of the United States, every person undertaking such an activity or operation, or owning or operating such facility, shall comply with such requirements.

This amendment is absolutely critical because the current language mandating the adoption of requirements identifying Best Management Practices (BMPs) "*as may be appropriate to minimize* the generation, transport and discharge of pollutants" clearly does not meet the regulatory requirement to effectively *prohibit* non-storm water discharges, nor does it satisfy the Maximum Extent Practicable (MEP) standard. According to federal Environmental Protection Agency (EPA), "Compliance with the technical standard of MEP *requires the successful implementation of approved BMPs.*"¹ According to the State Water Resources Control Board (SWRCB), the County:

... shall *require controls* to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods. The MEP standard involves applying BMPs that are effective in reducing the discharge of pollutants in storm water runoff. In discussing the MEP standard, the State Board has said the following: "There must be a serious attempt to comply, and practical solutions may not be lightly rejected. If, from the list of BMPs, a permittee chooses only a few of the least expensive methods, it is likely that MEP has not been met. On the other hand, if a permittee *employs all applicable BMPs except those where it can show that they are not technically feasible in the locality, or whose cost would exceed any benefit to be derived,* it would have met the standard. *MEP requires permittees to choose effective BMPs,* and to reject applicable BMPs only where other effective BMPs will serve the same purpose, the BMPs would not be technically feasible, or the cost would be prohibitive."² (emphases added)

¹ US EPA, Storm Water Phase II Compliance Assistance Guide, March 2002, at <http://www.epa.gov/npdes/pubs/comguide.pdf>.

² SWRCB, Phase II Small MS4 General Permit Questions and Answer Document, updated August 5, 2004, at <http://www.waterboards.ca.gov/stormwtr/smallms4faq.html>.

Our proposed language is drawn directly from EPA's model illicit discharge ordinance³ and was recommended by the SWRCB to be incorporated into the County's ordinance,⁴ but this recommendation was disregarded by staff in finalizing the draft ordinance. We strongly urge the Board to incorporate this change such that the ordinance satisfies the above-referenced regulatory requirements and mimics the EPA's model ordinance.

Sec. 29-49(b)

"Notwithstanding the presence or absence of requirements pursuant to subsection (a), any responsible party engaged in activities or operations, or owning facilities, premises or property which will or may result in pollutants entering storm water or the storm drain system, shall implement Best Management Practices to the extent they are technically feasible and the cost would not be prohibitive, as determined by the Director of Public Works, to prevent and reduce such pollutants."

Regarding this sub-section, Channelkeeper urges the deletion of the following text: "and the cost would not be prohibitive as determined by the Director of Public Works." Subjective economic infeasibility does not excuse the County or any responsible party from the requirement to prevent, control and reduce storm water pollutants. EPA requires the County to implement and enforce a program designed to reduce the discharge of pollutants from their storm drain system to the MEP standard. Cost is a factor in meeting this standard but is not the primary factor.

The Clean Water Act mandates that the County "shall require controls," and must "employ *all applicable BMPs except those where it can show that they are not technically feasible in the locality, or whose cost would exceed any benefit to be derived.*"⁵ The MEP standard requires that the County "reject applicable BMPs only where other effective BMPs will serve the same purpose, the BMPs would not be technically feasible, or the cost would be prohibitive."⁶ Moreover, leaving this determination up to the discretion of the Public Works Director is not an efficient nor sufficiently clear-cut directive to responsible parties; this language suggests that the Director must make a determination regarding the technical and economic feasibility of each and every BMP in every case. Clearly, requiring BMPs only "to the extent they are technically feasible and the cost would not be prohibitive as determined by the Director of Public Works" falls short of the above-referenced mandates to implement all applicable BMPs.

Sec. 29-49(c)

Channelkeeper recommends that the following text be added to this section:

The Board of Supervisors shall, from time to time, adopt Policy Interpretive and Implementation Guidelines for Hillside and Watershed Protection Policies, Guidelines for Surface and Storm Water Quality, A Planner's Guide to Conditions

³ US EPA, Model Ordinance to Protect Local Resources: Illicit Discharges, Section XI, at <http://www.epa.gov/owow/nps/ordinance/mol5.htm>.

⁴ Memo from Lori T. Okun, Senior Staff Counsel, Office of Chief Counsel, State Water Resources Control Board, to Chris Adair, Senior Environmental Scientist, and Ryan Lodge, Water Resources Control Engineer, Regarding Santa Barbara County Stormwater Management and Discharge Control Ordinance, Draft 05/05/04, January 25, 2007. See attachment.

⁵ Clean Water Act §402(p)(3)(B).

⁶ SWRCB, Phase II Small MS4 General Permit Questions and Answer Document.

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of Approval and Mitigation Measures and Standard Conditions for Project Plan Approval – Water Quality BMPs (collectively, "guidelines"). Such guidelines, when adopted, shall be valid County regulations and shall be used as a basis for conditioning any required grading permit, land use permit or coastal development permit. These guidelines, as may be amended from time to time, are hereby adopted by reference. The Clerk of the Board of Supervisors, the Director of Public Works and the Director of Planning and Development shall keep current copies of said guidelines on file for public review. Copies shall be available for purchase from the authorized enforcement agency at a price covering the cost of printing or reproduction. The violation of any requirement to prevent, control or reduce storm water pollutants in any County-issued permit, including post-construction operation or maintenance requirements, shall constitute a violation of this Ordinance.

This language, also recommended by the SWRCB⁷ but disregarded, provides for the legal enforceability of the County's guidelines, which, absent this language, lack the necessary enforceability required by EPA and the General Permit.

Sec. 29-55 Enforcement Measures After Appeal

"If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal, within 30 days of the decision of the Director of Public Works upholding the decision of the Santa Barbara County Public Works Department, then representatives of the Santa Barbara County Public Works Department shall enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any responsible party responsible party to refuse to allow the Santa Barbara County Public Works Department or designated contractor to enter upon the premises for the purposes set forth above."

Channelkeeper recommends that the length of time within which the Public Works Department shall take measures to abate violations that have not been corrected be changed from "30 days" to "7 days." 30 days is unnecessarily long to allow a polluted discharge to continue unabated.

Thank you for your consideration of Santa Barbara Channelkeeper's comments on the draft Storm Water Runoff Control Ordinance, and for your commitment to clean water in Santa Barbara County. Channelkeeper looks forward to continuing to work with the County to prevent and reduce stormwater pollution through the effective implementation of this ordinance and all the other elements of the SWMP.

Sincerely,

A handwritten signature in black ink, appearing to read "K Redmond", is centered on a light-colored rectangular background.

Kira Redmond, Executive Director

⁷ Lori Okun Memo.