

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

**STAFF REPORT FOR REGULAR MEETING OF MARCH 19-20, 2009
Prepared February 12, 2009**

ITEM NUMBER: 10

SUBJECT: Approval of Storm Water Management Program and Enrollment Under NPDES Municipal Storm Water Permit and Waste Discharge Requirements for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems (Phase II Storm Water Permit), County of Santa Cruz and City of Capitola, Santa Cruz County

KEY INFORMATION:

Location: County of Santa Cruz and City of Capitola, Santa Cruz County
Discharge Type: Municipal Storm Water
Existing Orders: None
This Action: Adopt Resolution No. R3-2009-0029 to approve County of Santa Cruz and City of Capitola Storm Water Management Program

SUMMARY

This item presents draft Resolution No. R3-2009-0029, which approves the County of Santa Cruz (County) and City of Capitola (City) Storm Water Management Program. The County's and City's Storm Water Management Program is a joint document that applies to both jurisdictions. A Water Board-approved Storm Water Management Program is required to enroll the County and City in the National Pollutant Discharge Elimination System (NPDES) Municipal Storm Water Permit for Small Municipal Separate Storm Sewer Systems (General Permit). This report provides background information regarding the County's and City's Storm Water Management Program development and a staff recommendation for Storm Water Management Program approval. The County and City submitted four Storm Water Management Program drafts over a five-year period, the latest of which is presented for consideration of approval. The Resolution approves the Storm Water Management Program, including staff recommended revisions to the program that are based on General Permit requirements and staff's expectations of Storm Water Management Program content communicated in the Executive Officer's February 15, July 2, and July 10, 2008 letters to the County and City. The County and City requested a public hearing based on their review of Water Board staff's required revisions to the Storm Water Management Program.

By adopting the Resolution (Attachment 1), the Water Board will enroll the County and City in the General Permit. The County and City will then be required to implement the Storm Water Management Program, which is designed to reduce pollutant discharges in urban storm water to the maximum extent practicable and protect water quality.

DISCUSSION

General Permit Storm Water Management Plan Requirement

The County and City are required by Clean Water Act §402(p) to obtain permit coverage pursuant to the General Permit. The General Permit regulates discharges from regulated small Municipal Separate Storm Sewer Systems (MS4s) to waters of the United States or to another MS4 regulated by an NPDES permit. The keystone requirement of the General Permit is the Storm Water Management Program, which is written by permit applicants to describe Best Management Practices (BMPs), measurable goals, and timetables for implementation of six program areas:

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 Storm Water Management Program describes the organizational framework under which the County and City will work to accomplish the objectives of their program. The County and City have five years to develop and implement a program which reduces pollutants in storm water runoff to the maximum extent practicable and protects water quality. The County and City will submit annual reports detailing program compliance, measurable goal status, and BMP and program effectiveness. Water Board staff will review annual reports and work with the County and City to improve program implementation.

The purpose of the Storm Water Management Program 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 requirements of the Clean Water Act. BMPs that attain these standards are expected to support healthy watersheds. The County and City must use a series of measurable goals, defined in the Storm Water Management Program, to identify the scope and magnitude of program implementation. Measurable goals and other criteria are also used to assess program effectiveness. The County's and City's proposed Storm Water Management Program contains those BMPs and measurable goals that the County and City believe will be most useful and effective in reducing the discharge of pollutants from storm sewer systems within the County and City and will comply with the General Permit. As discussed further, staff proposes required revisions to the County's and City's Storm Water Management Program to assure compliance with the maximum extent practicable standard and protection of water quality.

Chronology of Storm Water Management Plan Submittal, Review, and Revision

The County and City developed a Storm Water Management Program with input from Water Board staff and submitted it with a Notice of Intent to comply with the General Permit in 2003. Water Board staff deemed the Storm Water Management Program incomplete, made comments, and returned the Storm Water Management Program to the County and City for revisions. In response, the County and City submitted their revised Storm Water Management Program in May 2004. At that point, Water Board staff was focusing on other communities' Storm Water Management Programs and did not continue the process of

approving the County and City Storm Water Management Program. Water Board staff had little substantive communication with the County and City specifically about their Storm Water Management Program until February 15, 2008.

From the time of the County's and City's Storm Water Management Program submittal in May 2004 until February 2008, the Water Board approved few Phase II Storm Water Management Programs. The Water Board directed staff to pursue an alternative enrollment strategy for the remaining traditional MS4s in December 2007, based on the challenges that these approvals presented for the parties involved, and the resulting slow pace of MS4 enrollment under the General Permit. To facilitate the new enrollment strategy, the Water Board Executive Officer sent a letter on February 15, 2008 to the remaining un-enrolled traditional Phase II entities, including the County and City, and presented staff's expectations for Storm Water Management Program content (Attachment 2). Subsequent correspondence conveying staff's expectations for the Storm Water Management Program were also sent July 2 and July 10, 2008 (Attachments 3 and 4).

In response to the February 15, 2008 letter from the Executive Officer, the County and City submitted a draft Storm Water Management Program on August 22, 2008. Staff reviewed the Storm Water Management Program and identified 81 revisions staff found necessary for recommending the Storm Water Management Program's approval to the Water Board. These were conveyed to the County and City in staff's September 9, 2008 letter, which included a draft Table of Required Revisions (Attachment 5). Water Board staff then met with the County and City (and other Santa Cruz County municipalities) on September 11, 2008, to clarify expectations and resolve issues involving the required revisions. The County and City responded by submitting the October 2008 version of the Storm Water Management Program – the version the Water Board will be considering for approval at its March 19-20, 2009 meeting (Attachment 6).

Water Board staff determined that the Storm Water Management Program, with substantial revisions, meets the requirements of the General Permit. Staff notified the County and City on November 14, 2008, of the 49 necessary revisions (Attachment 7). On November 19, 2008, Water Board staff also posted the October 2008 version of the Storm Water Management Program, together with the required revisions, for a 60-day public comment period from November 19, 2008 to January 20, 2009.

Water Board staff received numerous comments on the County's and City's Storm Water Management Program and required revisions. On January 13, 2009, the County submitted lengthy comments challenging the legality of Water Board staff's required revisions, primarily involving interim hydromodification control criteria, long-term hydromodification control criteria, long-term watershed protection, and Wasteload Allocation Attainment Programs (Total Maximum Daily Load (TMDL) implementation) (Attachment 8). The County's comment letter also discussed how the County planned to address the required revisions in its Storm Water Management Program, and provided a supporting letter from non-profit organizations within Santa Cruz County. In this correspondence, the County also requested a public hearing. The City submitted comments on January 20, 2009 (Attachment 9). These comments requested a public hearing, addressed the required revisions, provided a supporting letter from non-profit organizations within Santa Cruz County, and supported the County comments regarding the legality of the required revisions.

In addition to comments from the City and County, Water Board staff received comments from the following organizations: Monterey Coastkeeper, Monterey Bay National Marine Sanctuary, Valley Women's Club of the San Lorenzo Valley, Sierra Club, and Lompico

Watershed Conservancy. Fifteen individuals also provided comments (Attachment 10).

The primary comments received and Water Board staff's responses are summarized below in the "Primary Public Comments and Responses" section of this Staff Report. Detailed responses to comments are found in Attachment 11.

Water Quality Context

Beyond the normal suite of pollutants present in urban storm water runoff, Water Board staff identified several significant pollutant discharge issues relating to storm water quality in the County and City. This was based on available information assessed in Spring 2008, as well as information provided at a public Water Quality Assessment meeting held in Santa Cruz County, by Water Board staff on May 16, 2008. Staff asked the County and City to specifically address the following primary pollutants of concern in the Storm Water Management Program: fecal indicator bacteria, sediment, nutrients, pesticides/toxicity, and trash. Additionally, staff asked the County and City to address the potential risk of new development and redevelopment contributing to both hydromodification and increased loading of urban pollutants in storm water. Subsequent staff review of the Storm Water Management Program has been focused on ensuring these issues are addressed.

Numerous water bodies are water quality impaired within the County and City. Importantly, the Water Board has adopted several TMDLs within the County's and City's jurisdictions. The following TMDLs identify the County's MS4 as a source contributing to impairment: San Lorenzo River, Aptos/Valencia Creeks, Soquel Lagoon, and Watsonville Slough Pathogens/Fecal Indicator Bacteria TMDLs; San Lorenzo and Pajaro River Sediment TMDLs; and San Lorenzo and Pajaro River Nitrate TMDLs. The City's MS4 is named as a source contributing to impairment in the Soquel Lagoon Pathogens/Fecal Indicator Bacteria TMDL. Water Board staff has addressed the storm water component of these TMDLs by requiring the County and City to develop Wasteload Allocation Attainment Programs to address those TMDLs which require storm drain system wasteload reductions (see Attachment 3). These programs outline a systematic approach to TMDL implementation in order to ensure assigned wasteload allocations are achieved within the specified timeframes.

Primary Public Comments and Responses

Water Board staff posted the Storm Water Management Program and required revisions to the Regional Water Board website and mailed a notice electronically on November 19, 2008, to all persons listed on the interested parties list. Comments on the Storm Water Management Plan were due back to the Water Board by January 20, 2009.

The following is a brief summary of the comments received and Water Board staff's responses. Detailed Water Board staff responses to all comments, received from all parties, are contained in Attachment 11.

As previously mentioned, the County and City submitted lengthy comments that challenged the legality of the required revisions (Attachments 8 and 9). These comments are primarily concerned with the required revisions addressing interim hydromodification control criteria, long-term hydromodification control criteria, long-term watershed protection, and Wasteload Allocation Attainment Programs (TMDL implementation). The County's and City's main arguments regarding these required revisions are that they are inflexible, do not consider local conditions, are not consistent with the maximum extent practicable standard, are not technically feasible, do not consider factors mandated by California Water Code section 13241, and constitute unfunded state mandates. Water Board staff's detailed responses to

these comments are provided in section IV of Attachment 11. In conjunction with these legal comments, the County and City submitted additional comments discussing how they planned to address each required revision, including the four main required revisions contested in the legal comments. Water Board staff responds to these comments in detail in sections II and III of Attachment 11.

Following receipt of the County's and City's comments, Water Board staff met with representatives from the County, City, and other Santa Cruz County municipalities on February 2, 2008 to discuss resolution of the issues involving the required revisions addressing interim hydromodification control criteria, long-term hydromodification control criteria, long-term watershed protection, and Wasteload Allocation Attainment Programs. The discussions focused on the practical aspects of implementation of the required revisions, rather than the legal issues raised by the County and City. As a result of this meeting, Water Board staff and the County and City were able to agree on modified language for the required revisions that addresses the majority of the County's and City's concerns.

The interim hydromodification control criteria required revision initially called for the County and City to develop criteria that is "as effective as" the criteria developed by Water Board staff in its February 15, 2008 letter. The County and City were mainly concerned about the technical feasibility of demonstrating that any criteria they were to develop would be "as effective as" Water Board staff's criteria. To resolve this issue, Water Board staff modified the required revision language to allow the County and City to pursue a methodology for criteria development that ensures effective resulting criteria. The methodology is similar to that used by the City of Santa Maria (and approved by the Executive Officer) and municipalities in the San Francisco Bay Area and San Diego County.

The long-term hydromodification control criteria required revision specified that the County and City conduct a technical assessment of local watershed conditions in order to identify long-term criteria that are protective of local receiving waters. The County and City were reluctant to commit to such an assessment, since they believed their interim hydromodification control criteria would essentially be sufficient for those purposes. Water Board staff informed the County and City of current efforts by the Central Coast Low Impact Development Center to obtain grant funding to assist with development of long-term hydromodification control criteria for the entire region. Once informed of these efforts, the County's and City's concerns with this required revision were alleviated. Water Board staff did not modify the required revision.

The long-term watershed protection required revision necessitated that the County and City develop quantifiable measures to demonstrate attainment of long-term watershed protection. The County and City were concerned that development of such quantifiable measures is not feasible in many cases. To alleviate those concerns, Water Board staff added language to the required revision so that quantifiable measures are only required where feasible. This maintains the requirement to develop quantifiable measures, but provides flexibility to the County and City regarding the conditions under which quantifiable measures are developed.

The required revision concerning Wasteload Allocation Attainment Program development required the County and City to develop a systematic approach to TMDL implementation, in order to ensure the TMDLs' wasteload allocations are achieved within the specified timeframes. The County and City felt they had already done much of the work required by the Wasteload Allocation Attainment Programs, and were concerned about being held responsible for controlling natural sources of waste in order to attain their wasteload

allocations. Water Board staff modified this required revision to clarify that Wasteload Allocation Attainment Programs need only address controllable sources of pollutants, and can be developed to be watershed-specific or applied jurisdiction-wide in order to conserve resources.

We also received comments by several organizations and other interested parties. Monterey Coastkeeper provided substantial comments which primarily concerned the level of detail and measurable goals found in the Storm Water Management Program. In response, Water Board staff has identified why the Storm Water Management Program's level of detail and measurable goals are largely sufficient. However, several required revisions were added in response to Monterey Coastkeeper's comments, mostly requiring the County and City to commit to identifying BMPs in the Storm Water Management Program once they are developed (please see section VII of Attachment 11 for more detail). The Sierra Club's comments primarily recommended requiring treatment of runoff from existing development. Water Board staff responded that the Storm Water Management Program focuses on implementation of source control BMPs for existing development as a first line of defense, and where source control BMPs are demonstrated to be insufficient, treatment BMPs may be required in the future (please see section XVII of Attachment 11 for more detail).

Several individual interested parties requested that Water Boars staff require more monitoring. In response, Water Board staff pointed out that the required revisions addressing effectiveness assessment and Wasteload Allocation Attainment Programs both necessitate monitoring. Individual interested parties also raised concerns about fecal indicator bacteria conditions in receiving waters within the County, primarily at the beaches. Water Board staff noted that the Wasteload Allocation Attainment Program required revision is designed to directly target this problem. Other individuals stated that the County's buffer zone requirements for riparian and wetland areas are often subject to exemptions. To track this issue, Water Board staff added a required revision specifying that the County identify in its annual reports any exemptions to the setback requirements that are granted. More detailed responses to these comments are provided in sections VIII through XVI of Attachment 11.

Required Revisions to Storm Water Management Program

Water Board staff has developed numerous required revisions in order to ensure the Storm Water Management Program reduces the discharge of pollutants to the maximum extent practicable and protects water quality. At the start of the enrollment process in September 2008, Water Board staff review of the Storm Water Management Program resulted in 81 required revisions. Following a subsequent revision of the Storm Water Management Program by the County and City, staff reduced its required revisions to 49. Staff posted these 49 required revisions with the revised Storm Water Management Program for public comment. As a result of public comments received, staff removed one required revision, and added another five, for a total of 53 required revisions (please see Attachment 12 for changes to the required revisions in underline-strikeout format). These 53 required revisions are part of the Resolution staff recommends you approve today.

It is important to note that in their comments on the posted Storm Water Management Program and required revisions, the County and City described how they planned to address each of the required revisions. Most of these proposals are consistent with the intent of the required revisions. In addition, as discussed above, Water Board staff and the County and City have largely come to agreement on the County's and City's four main issues of concern: required revisions for interim hydromodification control criteria, long-term hydromodification

control criteria, long-term watershed protection, and Wasteload Allocation Attainment Programs. At the time of this writing, staff and the County and City are only in disagreement over six required revisions (Nos. 26, 28, 42, 43, 46, and 47)(see sections II and III of Attachment 11). Most of these disagreements involve issues of interpretation and clarification. The County and City may also disagree with the five new required revisions made in response to comments (Required Revision Nos. 50 through 54). Staff will continue working with the County and City to resolve these issues prior to the hearing.

PUBLIC HEARING

The Water Board will hold a public hearing to consider the Resolution approving the County and City Storm Water Management Program, for coverage under the General Permit for Storm Water Discharges from Small MS4s. The hearing will be on March 19-20, 2009, at the Watsonville City Council Chambers, 275 Main Street, 4th Floor, Watsonville, California. The hearing agenda will be posted to the Water Board website at:
http://www.waterboards.ca.gov/centralcoast/board_info/agendas/2009/2009_agendas.shtml

Interested parties can obtain further information regarding the conduct and nature of the public hearing concerning this draft resolution by writing or visiting the Water Board office, at 895 Aerovista Place, Suite 101, San Luis Obispo, CA 93401, attention Phil Hammer, (805) 549-3882, or phammer@waterboards.ca.gov.

CONCLUSION

The Phase II municipal storm water regulations were promulgated in 1999 and the General Permit was adopted in 2003, but the County and City have not yet been enrolled under the General Permit. While the County and City have implemented some storm water management measures, many aspects of their programs have not been implemented due to this delay. The slowed program implementation resulting from the lack of enrollment of the County and City under the General Permit has direct water quality implications. As such, enrollment of the County and City is an important step forward in achieving healthy functioning watersheds.

The intent of the General Permit is to develop and implement Storm Water Management Programs that reduce the discharge of pollutants to the maximum extent practicable and protect water quality. Water Board staff finds that with the revisions identified in Resolution R3-2009-0029, the Storm Water Management Program will meet or exceed the General Permit's standards for these reasons: 1) The Storm Water Management Program with revisions meets the General Permit requirements, including Attachment 4 requirements addressing new development and redevelopment; 2) the Storm Water Management Program with revisions employs BMPs to address the pollutants of concern and protect water quality now and in the future; and 3) the Storm Water Management Program with revisions provides a logical progression of BMP implementation to meet a full program realization in a timely manner.

RECOMMENDATION

Water Board staff recommends the Water Board adopt the attached Resolution R3-2009-0029 approving the October 2008 Storm Water Management Program and require the County and City to make the revisions to their Storm Water Management Program, and thereby approve enrollment of the County and City in the General Permit.

ATTACHMENTS

1. Board Resolution R3-2009-0029 (including final Table of Required Revisions)
2. Letter from Water Board, February 15, 2008
3. Letter from Water Board, July 2, 2008
4. Letter from Water Board, July 10, 2008
5. Letter from Water Board, September 9, 2008
6. County of Santa Cruz/City of Capitola Storm Water Management Program October 2008
7. Letter from Water Board, November 14, 2008
8. Letter from County of Santa Cruz, January 13, 2009 (Comments on Required Revisions)
9. Letter from City of Capitola, January 20, 2009
10. Comment Letters from Interested Parties
11. Response to Comments
12. Table of Required Revisions (with changes in response to comments in underline-strikeout format)

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