

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

**STAFF REPORT FOR REGULAR MEETING OF MARCH 19-20, 2009
Prepared February 17, 2009**

ITEM NUMBER: 11

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), City of Scotts Valley, Santa Cruz County**

KEY INFORMATION:

Location: City of Scotts Valley, Santa Cruz County
Discharge Type: Municipal Storm Water
Existing Orders: None
This Action: Adopt Resolution No. R3-2009-0030 to approve the City of Scotts Valley Storm Water Management Program

SUMMARY

This item presents draft Resolution No. R3-2009-0030, which approves the City of Scotts Valley (City) Storm Water Management Program. The issues and discussions addressed by this item are very similar to those discussed for Item 10 of the March 19-20, 2009 Agenda, since the City of Scotts Valley has coordinated with the County of Santa Cruz and the other Santa Cruz County municipalities in the development of its Storm Water Management Program.

A Water Board-approved Storm Water Management Program is required to enroll the 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 City's Storm Water Management Program development and a staff recommendation for Storm Water Management Program approval. The City submitted five Storm Water Management Program drafts over a five-year period; the October 2008 version of the SWMP 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 City requested a public hearing based on its 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 City in the

General Permit. The 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 City is 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 City will work to accomplish the objectives of their program. The City has 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 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 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 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 City's proposed Storm Water Management Program contains those BMPs and measurable goals that the City believes will be most useful and effective in reducing the discharge of pollutants from storm sewer systems within the City and will comply with the General Permit. As discussed further, staff proposes required revisions to the City's Storm Water Management Program to assure compliance with the maximum extent practicable standard and to protect water quality.

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

The 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, and staff and the City went through several review and revision iterations until 2005. At that point, Water Board staff was focusing on other communities' Storm Water Management Programs and did not continue the process of approving the City's Storm Water Management Program. Water Board staff had little substantive communication with the City specifically about its Storm Water Management Program until February 15, 2008.

From the time of the City's Storm Water Management Program submittal in 2003 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 City, and presented staff's expectations for Storm Water Management Program content (Attachment 2). Staff sent further correspondence conveying its expectations for the Storm Water Management Program on July 2 and July 10, 2008 (Attachments 3 and 4).

In response to the February 15, 2008 letter, the City submitted a draft Storm Water Management Program on August 1, 2008. Staff reviewed the Storm Water Management Program and identified 66 revisions staff found necessary for recommending the Storm Water Management Program's approval to the Water Board. These were conveyed to the City in staff's August 21, 2008 letter, which included a draft Table of Required Revisions (Attachment 5). Water Board staff then met with the City (and other Santa Cruz County municipalities) on September 11 and 12, 2008, to clarify expectations and resolve issues involving the required revisions. The 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 City on November 24, 2008, of the 40 necessary revisions (Attachment 7). On November 25, 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 25, 2008 to January 26, 2009.

Water Board staff received many comments on the City's Storm Water Management Program and required revisions. On January 26, 2009, the City 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 City's comment letter also discussed how the City planned to address the required revisions in its Storm Water Management Program, and provided a revised Storm Water Management Program demonstrating the proposed modifications. A supporting letter from non-profit organizations within Santa Cruz County was also included. In this correspondence, the City also requested a public hearing.

In addition to comments from the City, Water Board staff received comments from the Monterey Coastkeeper and Mr. Grey Hayes (Attachment 9).

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 all comments received are found in Attachment 10.

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 City. This was based on available information assessed by Water Board staff in Spring 2008, as well as information provided to Water Board staff at a public Water Quality Assessment meeting held in Santa Cruz County on May 16, 2008. Staff asked the City to specifically address fecal indicator bacteria and sediment as the City's primary pollutants of concern in the Storm Water Management Program. Additionally, staff asked the 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.

Several water bodies are water quality impaired within the City. Importantly, the Water Board has adopted two TMDLs within the City's jurisdiction. The City's MS4 is named as a source contributing to impairment in the Carbonera Creek Sediment and Fecal Indicator Bacteria TMDLs. Water Board staff has addressed the storm water component of these TMDLs by requiring the City to develop Wasteload Allocation Attainment Programs (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 Water Board website and mailed a notice electronically on November 25, 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 26, 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 10.

As previously mentioned, the City submitted lengthy comments that challenged the legality of the required revisions (Attachment 8). 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 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 III of Attachment 10. In conjunction with these legal comments, the City submitted additional comments

discussing how it 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 section II of Attachment 10.

Following receipt of the City's comments, Water Board staff met with representatives from the 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 City. As a result of this meeting, Water Board staff and the City were able to agree on modified language for the required revisions that addresses the majority of the City's concerns.

The interim hydromodification control criteria required revision initially called for the City to develop criteria that is "as effective as" the criteria developed by Water Board staff in its February 15, 2008 letter. The City was 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 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 City conduct a technical assessment of local watershed conditions in order to identify long-term criteria that are protective of local receiving waters. The City was reluctant to commit to such an assessment, since it believed its interim hydromodification control criteria would essentially be sufficient for those purposes. Water Board staff informed the 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 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 City develop quantifiable measures to demonstrate attainment of long-term watershed protection. The City was concerned that development of such quantifiable measures is not feasible in many cases. To alleviate that concern, 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 City regarding the conditions under which quantifiable measures will be developed.

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

Water Board staff also received comments from Monterey Coastkeeper. These comments were largely general in nature, and primarily discussed the vagueness and resulting inadequacy of the SWMP. While Water Board staff agrees that the City's SWMP needs improvement, Water Board staff has explained in response how the required revisions address Monterey Coastkeeper's concerns and ensure an adequate level of detail in the SWMP. In addition, Water Board staff received comments from one individual, Mr. Grey Hayes. Mr. Hayes' comments focused on improved monitoring, oversight of construction sites, and a few other topics. In response to these comments, Water Board staff has added required revisions specifying that the City clarify its field screening process to identify illicit discharges and conduct a portion of its construction site inspections during rain events to ensure BMP effectiveness.

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 66 required revisions. Following a subsequent revision of the Storm Water Management Program by the City, staff reduced its required revisions to 40. Staff posted these 40 required revisions with the revised Storm Water Management Program for public comment. As a result of public comments received, Water Board added another three required revisions, for a total of 43 (please see Attachment 11 for changes to the required revisions in underline-strikeout format). These 43 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 City described how it planned to address each of the required revisions and provided an updated SWMP demonstrating the modification intended by the City. Most of these proposals and modifications are consistent with the intent of the required revisions. In addition, as discussed above, Water Board staff and the City have largely come to agreement on the 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 City are only in disagreement over nine required revisions (Nos. 1, 2, 11, 14, 17, 22, 26, 28, and 33)(see section II of Attachment 10 for further discussion). Most of these disagreements involve issues of interpretation and clarification. The City may also disagree with the three new required revisions made in response to comments (Required Revision Nos. 41 through 43). Staff will continue working with the 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 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 City has not yet been enrolled under the General Permit. While the City has implemented some storm water management measures, many aspects of its program have not been implemented due to this delay. The slowed program implementation resulting from the lack of enrollment of the City under the General Permit has direct water quality implications. As such, enrollment of the 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 required revisions identified in Resolution R3-2009-0030, 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 achieve full program realization in a timely manner.

RECOMMENDATION

Water Board staff recommends the Water Board adopt the attached Resolution R3-2009-0030, which approves the October 2008 Storm Water Management Program and requires the City to make revisions to its Storm Water Management Program, thereby approving enrollment of the City in the General Permit.

ATTACHMENTS

1. Board Resolution R3-2009-0030 (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, August 21, 2008
6. City of Scotts Valley Storm Water Management Program October 2008
7. Letter from Water Board, November 24, 2008
8. Letter from City of Scotts Valley, January 26, 2009 (Comments on Required Revisions)

9. Comment Letters from Interested Parties
10. Response to Comments
11. Table of Required Revisions (with changes in response to comments in underline-strikeout format)

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