



July 28, 2004

Via Electronic Mail and U.S. Mail

Mr. Roger W. Briggs
Central Coast Regional Water Quality Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401
rbriggs@rb3.swrcb.ca.gov

Re: Monterey Regional Storm Water Management Program

Dear Mr. Briggs,

On July 6, 2004, we wrote to the Central Coast Regional Water Quality Control Board (“Regional Board”) requesting clarification of the review procedure for the Monterey Regional Storm Water Management Program (“MRSWMP”) as well as restated our request for a hearing before the Regional Board on four threshold issues identified at the June 2004 stakeholder meeting. On July 27, 2004, we received an electronic message from Regional Board staff attaching a July 21, 2004 “Regional Board Staff Guidance” for the MRSWMP on the four threshold issues.

Although the “Regional Board Staff Guidance” includes a decision on the four threshold issues, it fails to address our request to clarify the review procedure for the MRSWMP and completely ignores our request for a hearing before the Regional Board on the four threshold issues. Notably, the Regional Board invited the Natural Resources Defense Council (“NRDC”), other environmental groups, and permittees to participate in this alternative “stakeholder” process. In the spirit of cooperation, NRDC has participated in several informal discussions with Regional Board staff, provided relevant documents, as well as attended the June 2004 meeting in Monterey. In particular, we are disappointed with the “stakeholder” process and the “Regional Board Staff Guidance” because neither has so far accommodated our stated concerns, particularly in regard to the four threshold issues addressed in the guidance.

As discussed in our July 6, 2004 letter, these four threshold issues are fundamental policy and legal issues that necessarily will impact the revision of the MRSWMP (which the Permit applicants agreed to do at the June 2004 meeting).

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Proceeding with such revisions now based only on a staff recommendation in the "Regional Board Staff Guidance" on these issues would be inefficient and counter-productive. Since the four issues are fundamental to any revision of the MRSWMP and staff recommendations are not final Regional Board determinations, these four issues will be raised in the context of the Regional Board's final hearing on adoption of the MRSWMP. However, any decision by the Regional Board contrary to staff recommendations at the end of the process would lead to full scale revision of the MRSWMP in light of the fundamental nature of the four issues. Importantly, revising the MRSWMP based on staff recommendations and without a hearing on the four issues potentially creates a MRSWMP that does not meet legal standards. Thus, the most efficient process for all concerned is to resolve these matters now so that the MRSWMP can be revised to meet all necessary requirements and in a manner consistent with the Board's policy judgment for the control of urban runoff in Region 3. Therefore, we request again an early hearing before the Regional Board on these issues, or alternatively, a workshop before the Board to address these four issues prior to revision of the MRSWMP.

Without submitting comprehensive comments on the "Regional Board Staff Guidance" at this time, we note three initial concerns with the Guidance. First, the "Regional Board Staff Guidance" appears to be an illegal underground regulation under the Administrative Procedures Act. Second, we disagree with the determination on "Issues #1 and #2 – SUSMP and Attachment 4" because it is contrary to the Clean Water Act and State Board precedent in light of the size and population served by the municipal stormwater system at issue. Third, the "Regional Board Staff Guidance's" reliance on a draft proposal for the Ocean Plan, which has been severely criticized as illegal, to create apparent exemptions to the ASBS prohibition instead of complying with the prohibition is specious. These problems alone evidence the need for an early Regional Board hearing before the MRSWMP is revised.

In this connection, the "Regional Board Staff Guidance" states that a party affected by the determination on the four issues may petition the State Water Resources Control Board ("State Board") within 30 days of the July 21, 2004 letter. We are concerned by this petition procedure. This invitation to appeal now, instead of waiting for conclusion of the Regional Board process later this year, could effectively oust the Regional Board from the process. However, because of staff's invitation to appeal and the fundamental nature of these four threshold issues, NRDC will petition the State Board on these issues by August 20, 2004 unless the Regional Board amends its recent letter in a manner that makes clear that any appeal regarding this matter can await final disposition by the Regional Board.

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Based on the above, we request that the Regional Board respond to this letter and our July 6, 2004 letter requesting an early hearing before the Regional Board to decide these four fundamental policy issues prior to any further action on the MRSWMP by the Regional Board staff, municipalities, and other groups. Please feel free to contact us if you have any questions or need further clarification.

Sincerely,



David S. Beckman
Anjali I. Jaiswal

cc (electronically): Donette Dunaway ddunaway@rb3.swrcb.ca.gov
Ms. Jennifer Bitting jbitting@rb3.swrcb.ca.gov
Bruce Fujimoto, SWRCB fujib@dwq.swrcb.ca.gov
Jarma Bennett, SWRCB bennj@dwq.swrcb.ca.gov
Regional Board e-mail list of interested parties