

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

STAFF REPORT FOR REGULAR MEETING OF JULY 7- 8, 2005

Prepared on June 15, 2005

ITEM NUMBER: 33

SUBJECT: Recently Adopted State Policy for the Implementation and Enforcement of the Nonpoint Source Pollution Control Program

SUMMARY

This is an information item to update the Water Board on staff's efforts to implement the recently adopted State Policy for the Implementation and Enforcement of the Nonpoint Source Pollution Control Program.

The new non-point source implementation policy is a major shift toward a more regulatory program approach. The new approach will help us achieve two major accomplishments: control major sources of non-point source pollution control in the highest priority watersheds, and implementation of orders developed pursuant to TDML Implementation Plans.

DISCUSSION

California's most serious water quality problem is Nonpoint Source (NPS) pollution. Polluted runoff from nonpoint sources accounts for more than 76 percent of the water bodies on the State's 303(d) list of impaired waters. The Porter-Cologne Water Quality Control Act was amended in 1999 to require the State Water Board to develop guidance to enforce the state's NPS pollution control program. The State Water Board adopted the Policy for the Implementation and Enforcement of the Nonpoint Source Pollution Control Program (NPS Policy) on May 20, 2004 and the Office of Administrative Law approved the policy on August 26, 2004. The full text of the policy is available at:
<http://www.swrcb.ca.gov/nps/docs/oalfinalcopy052604.doc>

Though the NPS Policy has been in existence for several months, staff has observed a relatively low

level of awareness among the regulated community and various resource conservation services (Resource Conservation Districts, the Natural Resources Conservation Service, and the University Cooperative Extension), indicating that extensive public outreach will be necessary to inform potentially affected parties of the NPS Policy.

The NPS Policy comprehensively addresses all NPS pollution—a broad category encompassing many landuses and pollution sources. In the Central Coast Region major landuse activities affected by the policy include: hydromodification such as increased impervious cover, inadequate or poorly designed drainage infrastructure, and riparian encroachment; livestock operations; and agricultural activities not covered under the conditional waiver for irrigated agriculture.

Regional Board staff, while conducting water quality assessments during development of Total Maximum Daily Loads and their implementation plans (TMDLs), have identified many of these sources of nonpoint source pollution, including, but not limited to:

- Rural residential properties that maintain farm animals and livestock - Riparian encroachment, stream bank and channel erosion, upland erosion, and loading of animal wastes to waterbodies are all potential sources of nonpoint source pollution associated with this landuse. Potentially affected parties include individual landowners.
- Hydromodification activities - Hydromodification is defined as a change in runoff characteristics due to changes in land use conditions. Most land use changes (e.g. conversion of undisturbed areas to agriculture,

or conversion of agricultural lands to urban uses) result in hydromodification. These changes generally have the effect of modifying natural stream and watershed processes by altering the terrain, modifying the vegetation and soil characteristics, introducing pavement and buildings, installing drainage and flood control structures, and altering the condition of stream channels through straightening, deepening, smoothing and sometimes armoring. Potentially affected parties include individual landowners and city- and county-owned or operated properties.

- Grazing and rangeland activities - These activities can result in riparian encroachment, stream bank and channel erosion, upland erosion, and the loading of animal wastes to waterbodies. Potentially affected parties include individual landowners and possibly state or federally owned lands.

Requirements of the NPS Policy

The NPS Policy requires all current and proposed nonpoint source discharges to be regulated under Waste Discharge Requirements (WDRs), waivers of WDRs, a basin plan prohibition, or some combination of these administrative tools. This requirement invalidates the old "three-tier approach" for NPS control, which allowed NPS dischargers to pursue self-determined strategies not linked to permits or prohibitions. If these self-determined strategies proved ineffectual or were not pursued, Regional Boards could use "regulatory encouragement" such as Memoranda of Understanding or Management Agency Agreements to induce more effective NPS pollution control. Only the third "tier" of the old approach involved the use of regulatory tools such as WDRs and enforcement.

Under this earlier arrangement, staff in the Central Coast Region emphasized the self-determined approach to NPS control and directed substantial grant funding to NPS implementation projects proposed by non-governmental organizations as well as Resource Conservation Districts, the Natural Resources Conservation Service, and the University Cooperative Extension. Staff used MOUs and regulatory tools less commonly and investigation and enforcement on NPS polluters in only a few cases.

The new NPS Policy acknowledges that the Regional Water Boards still have significant leeway in working with dischargers to improve ongoing programs and staff envisions continuing grant-giving as an effective means to achieve water quality goals. While the policy requires all NPS discharges to be covered under permits, waivers, or prohibitions, it also encourages the Boards to look ahead and consider situations where there will be a need to take an enforcement action. Therefore, permits and approvals are structured with this possibility in mind.

NPS Pollution Control Implementation Programs

The centerpiece of the NPS Policy is the requirement to prepare NPS Pollution Control Implementation Programs (NPS Implementation Programs). An NPS Implementation Program is a program developed to comply with WDRs, waivers of WDRs, or basin plan prohibitions. They may be developed by the Water Board, by individual dischargers, or by or for a coalition of dischargers in cooperation with a third-party representative, organization or government agency. To comply with the NPS Policy, each NPS Implementation Program must include the following key elements:

- **Key Element 1:** An NPS Implementation Program must explicitly acknowledge the beneficial uses and water quality requirements the programs are designed to protect and meet;
- **Key Element 2:** The NPS Implementation Program shall include a description of the management practices (MPs) and other program elements that are expected to be implemented, along with an evaluation program that ensures proper implementation and verification;
- **Key Element 3:** The Implementation Program shall include a time schedule and quantifiable milestones, should the Water Board so require;
- **Key Element 4:** The Implementation Program shall include sufficient feedback mechanisms (e.g. reporting, inspection, monitoring, etc.) so that the Water Board, dischargers, and the public can determine if the implementation program is achieving its stated purpose(s), or whether additional or different MPs or other actions are required; and,
- **Key Element 5:** Each Water Board shall make clear, in advance, the potential consequences for failure to achieve an NPS control implementation program's stated purposes.

Central Coast Region Staff Strategy for NPS Policy Implementation

Staff will phase in the implementation of the NPS Policy to achieve its ultimate goal of enrolling all NPS dischargers into WDRs or waivers of WDRs, or, of developing conditional prohibitions for NPS dischargers. Staff proposes to emphasize NPS Policy implementation in watersheds with known impairments caused by nonpoint sources. TMDLs, which rely on the tools of watershed assessment, are staff's primary tool for developing the information necessary to determine the type of NPS activity impacting water quality. Therefore, watersheds where TMDLs are developed are the first places we are implementing the NPS Policy.

Where Staff is developing TMDL Implementation Plans to control NPS pollution, we will be consistent with the NPS Policy and include the most appropriate of the three administrative tools (WDR, waiver, or prohibition) for the situation. Currently, staff is piloting the use of prohibitions. We will evaluate whether to: rely on existing Basin Plan prohibitions, modify existing Basin Plan prohibitions, or propose new Basin Plan prohibition language as an amendment. Current prohibitions in the Basin Plan are general and apply to the entire region. Newly proposed prohibitions may be geographically (watershed)-specific, activity-specific (e.g., hydromodification), and/or pollutant-specific. Currently proposed TMDL implementation plans will require owners or operators of facilities or activities identified as nonpoint sources to develop NPS Implementation Programs to comply with the prohibition or specific conditions.

The new NPS Policy also fits well with our vision process, where we are developing measurable goals and accountability. We will use the new NPS Policy as the fundamental tool for achieving non-point source goals developed via our vision process.

CONCLUSION

Staff anticipates a variety of challenges to implementing the NPS Policy. As with any new initiative staff recognizes the need for education and outreach to inform parties affected by the policy. The new NPS Policy is a major change in how we address non-point source pollution. Staff will therefore implement a significant education and outreach effort as we move forward.

Nonpoint source dischargers will generate NPS Implementation Programs, requiring Regional Board staff involvement at many levels. These Programs include a key element (number 5), which requires the Regional Board to identify the regulatory consequences of a discharger failing to achieve the goals of the Program. Additionally, staff will need to track these NPS Implementation Programs to determine their success.

Staff proposes to meet these challenges by piloting our efforts in the watersheds where TMDLs are developed. This will enable us to identify strategies for conducting outreach, reviewing and tracking NPS Implementation Programs, and to arrive at efficient and effective means of managing the additional workload.

This approach will help us achieve two major accomplishments: control of major sources of non-point source pollution in the highest priority watersheds, and implementation of orders developed pursuant to TDML Implementation Plans.

Staff will move forward and implement the new NPS Policy as described above. We look forward to discussing the new NPS Policy with the Water Board.

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