

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

**STAFF REPORT FOR REGULAR MEETING OF FEBRUARY 9-10, 2006**

Prepared January 20, 2005

**ITEM NUMBER:** 5

**SUBJECT:** Issuance of NPDES Municipal Storm Water Permit Waste Discharge Requirements for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems (Phase II Storm Water Permit), Monterey Regional Group, Monterey County

**KEY INFORMATION**

**Location:** Cities of Monterey, Del Rey Oaks, Sand City, Seaside, Pacific Grove, Marina, and the County of Monterey, all within Monterey County

**Discharge Type:** Municipal Storm Water

**Existing Orders:** None

**This Action:** Adopt Resolution No. R3-2006-0022 Approving Monterey Regional Storm Water Management Program

**I. SUMMARIZED BACKGROUND HISTORY**

The Cities of Monterey, Del Rey Oaks, Sand City, Seaside, Pacific Grove, Marina, and the County of Monterey (hereinafter referred to as the Monterey Regional Group) are required by the Clean Water Act §402(p) to obtain permit coverage pursuant to the NPDES Municipal Storm Water Permit for Small Municipal Separate Storm Sewer Systems (General Permit, or Phase II Storm Water Permit). The keystone of the Phase II Storm Water permit program is the Storm Water Management Program that is written by the permit applicants.

The Monterey Regional Group developed the Monterey Regional Storm Water Management Program (MRSWMP) over the course of about four years, with input from Water Board storm water staff and members of the local communities. The Monterey Regional Group

submitted their initial MRSWMP and Notice of Intent to comply with the General Permit on March 4, 2003, prior to the August 8, 2003 due date. Water Board staff deemed the MRSWMP incomplete, made comments, and returned the MRSWMP to the Monterey Regional Group for revisions. This review-revision process was repeated several times until we arrived at a "final" version (which has since been revised), dated February 17, 2004. Water Board staff accepted the MRSWMP, and posted it on the State Board website for a 75 day public comment period which ended April 30, 2004. Water Board staff received several comment letters and scheduled a meeting for early June 2004 to give the Monterey Regional group and Water Board staff an opportunity to interact with commenters. The purpose of the meeting was to reach consensus and revise the MRSWMP to satisfy commenters' concerns. At the closing of the June 2004 meeting, the Monterey Regional Group agreed to withdraw

the MRSWMP, and make revisions to reflect the main concerns raised at the meeting. The Monterey Regional Group re-submitted a draft MRSWMP, dated December 8, 2004.

Water Board staff determined that the MRSWMP was complete and posted the document for a 30-day public comment period on December 10, 2004. Additional comments were received during the comment period. Minor modifications were made to the MRSWMP and it was scheduled for the May 2005 Water Board hearing.

During the May 2005 Water Board hearing, several commenters and Water Board members expressed concern about the lack of detail and specificity in the MRSWMP. The Board directed the Monterey Regional group to revise the MRSWMP to include additional details and specificity.

The Monterey Regional Group submitted a revised MRSWMP on October 31, 2005. Water Board staff determined that the revised MRSWMP was complete and posted the document for 30-day public comment period on November 16, 2005.

## **II. MONTEREY REGIONAL STORM WATER MANAGEMENT PROGRAM (MRSWMP) SUMMARY**

The MRSWMP describes the organizational framework under which the participating entities will work together to accomplish the objectives of the program. It contains a description, and map, of the areas to be covered by the NPDES permit for which the program was prepared. It also describes Best Management Practices (BMPs) with justification for BMP choices, Measurable Goals, implementation timeframes, and implementing party(ies).

The purpose of the MRSWMP 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 appropriate water quality requirements of the Clean Water Act. The achievement of these objectives will be gauged using a series of Measurable Goals, which also are contained in the MRSWMP.

The BMPs are grouped under the following six "Minimum Control Measures" (MCMs), which are required under the Phase II regulations:

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 MRSWMP lists BMPs and Measurable Goals, developed by the participating entities, using the comprehensive list of potential BMPs and Measurable Goals promulgated by EPA, and based on the Model Urban Runoff Program (MURP). The development of the MURP was a team effort that included the City of Monterey, City of Santa Cruz, California Coastal Commission, Monterey Bay National Marine Sanctuary, Woodward-Clyde Consultants, Association of Monterey Bay Area Governments, and the Central Coast Regional Water Quality Control Board. The MURP includes tools for local governments to develop comprehensive urban runoff programs.

The MRSWMP list contains those BMPs and Measurable Goals that the participants believe will be most useful and effective in reducing the discharge of pollutants from storm sewer systems within the particular geographic area and land uses covered by this permit.

## **III. DISCUSSION**

The April 2005 MRSWMP was presented at the May 2005 Water Board meeting. At the May 2005 meeting Water Board members

directed the Monterey Regional group to revise the MRSWMP to include additional specificity and details. The Monterey Regional group submitted a revised MRSWMP on October 31, 2005 (Attachment 1).

The Natural Resources Defense Council (NRDC) and the Ocean Conservancy submitted a report titled "A Practical Plan for Pollution Prevention: Urban Runoff Solutions for the Monterey Region" (Report) in November 2005 (Attachment 2). The Report compares the April 2005 version of the MRSWMP to other programs in California and Georgia, and to the Model Urban Runoff Program prepared by the Cities of Monterey and Santa Cruz, the Association of Monterey Bay Area Governments and several state and federal agencies.

The revised MRSWMP was posted on the State Board web page for a 30-day public comment period. The NRDC submitted comments on the revised MRSWMP on December 16, 2005 (Attachment 3).

Water Board staff response to all NRDC and Ocean Conservancy comments are included as Attachments 4 and 5. The four main topics in this Discussion section reflect the primary concerns that remain between the commenters, the MS4s and Water Board staff.

#### A. General Permit Attachment 4 Design Standards (Supplemental Provisions)

The General Permit Attachment 4 Design Standards, also called "Supplemental Provisions," establish minimum BMP requirements that stress (i) low impact design; (ii) source controls; and (iii) treatment controls. Attachment 4 Design Standards are not required for all Phase II entities. Attachment 4 Design Standards are required for "areas subject to high growth or serving a population of at least 50,000."

The high growth rate MS4s (as defined by the General Permit, quoted above) within the Monterey Group include Castroville,

Prunedale, and Sand City. These MS4s must comply with Attachment 4 requirements.

The commenters state that Attachment 4 Design Standards should be required for the entire Monterey Regional group. Staff believes the commenters' suggestion of expanding the Attachment 4 requirements to include all portions of the Monterey Regional group does not have a strong water quality related basis, and is overreaching. However, portions of the storm water from Pacific Grove and the City of Monterey discharge directly to the Pacific Grove Marine Gardens Fish Refuge and Hopkins Marine Life Refuge Area of Biological Significance (ASBS No. 19) (also see Section III.B ASBS discharge prohibitions, below, for more discussion on this topic). ASBSs are marine areas that have been identified by the State Water Resources Control Board as being deserving of enhanced protection measures to preserve their level of "biological significance." It is generally understood and accepted that storm water has the potential to carry pollutants to receiving waters. The Attachment 4 standards are designed to provide a higher level of protection than other Phase II Best Management Practices. Consequently, Water Board staff recommend that MS4s discharging directly to an ASBS water body also comply with Attachment 4 standards. Pacific Grove and the City of Monterey both discharge directly into ASBSs. The revised MRSWMP currently states that only those municipalities subject to "Supplemental Provision E" (high growth rate MS4s) intend to follow Attachment 4; for the Monterey Regional Group this list currently includes Castroville, Prunedale, and Sand City. Water Board staff recommend the Water Board require a revision to the MRSWMP to include Pacific Grove and the City of Monterey in the group of MS4s required to implement Attachment 4 Design Standards.

#### B. ASBS Discharge Prohibitions

The General Permit is an NPDES permit, and thus allows permitted discharge within given conditions. Pacific Grove and the City of

Monterey currently have both storm water and non-storm water discharges to in violation of the California Ocean Plan. Originally, Water Board staff issued Draft Cease and Desist Orders (CDO) to address the prohibited discharges, and intended to bring both the CDOs and the MRSWMP to the February, 2005 Water Board hearing. In the week before the February 2005 hearing, the potential permittees objected to the issuance of the CDOs. Water Board staff and management concluded that it would be better to separate the MRSWMP from the enforcement actions and adopt the MRSWMP as soon as possible, so that BMP implementation and water quality protection could/would commence immediately.

Currently, staff and management are working with the dischargers and interested parties to determine the most appropriate and productive method to bring the dischargers into compliance with the Ocean Plan prohibition. The most feasible means of compliance appears to be a conditional exception to the prohibition. Only the State Water Resources Control Board (State Water Board) has the authority to grant an exception at this time. It is not known what conditions the State Water Board will require for an MS4 discharging to an ASBS. The conditions may be implemented through the storm water permit.

Storm water discharges to ASBS violate both the Ocean Plan prohibition and the General Permit. The approval of the MRSWMP does not authorize continued violations of either provision, but imposes interim conditions to minimize the effects of these discharges.

#### C. Choice and Degree of BMPs Implementation

The NRDC and Ocean Conservancy Report and the NRDC comment letter indicate that communities around the nation are able to implement BMPs that meet Phase I and II Storm Water MEP standards, and exceed the BMPs called for in the MRSWMP. The Report lists BMPs included in SWMPs around the country.

Phase I Storm Water Management Programs have taken two to three permit iterations (10 – 15 years) to evolve to the level we see today. Phase II communities, such as those in the Monterey Regional Group, are not required or expected to have Phase I programs. The General Permit acknowledges that the first permit round will allow a ramping up period for program development and implementation.

The commenter contends that because certain BMPs are included in other SWMPs, they are “practicable” (since other municipalities have implemented them) and therefore must be included in the MRSWMP. The selection and implementation of BMPs is a site-specific procedure. An effective BMP in one area or situation might be entirely inappropriate in another area or situation. Additionally, the BMPs proposed in other Phase II communities have not been fully implemented or evaluated. The Phase II SWMPs are in the early stages of development and implementation. The success of specific BMPs and of overall Phase II programs remains to be determined. Requiring the Monterey Regional Group to implement BMPs solely because they are included in other communities’ SWMPs will not necessarily improve water quality and could drain resources from BMPs that local officials believe will improve water quality.

The MEP standard allows permittees flexibility to maximize reductions in storm water pollutants, based on location. Many factors contribute to BMP selection and implementation including receiving water conditions, local concerns, MS4 size, local climate, hydrology, geology, and available resources. The MEP standard allows permittees to determine the appropriate BMPs to meet permit requirements and reduce pollutants to the MEP.

#### D. Specificity of the MRSWMP

Many of the comments have centered around commenters’ concern that the MRSWMP is not detailed enough to allow a transparent review, versus the MRSWMP-authors’ belief

that the document is as specific as it realistically can be. Water Board Members commented at the May 2005 Water Board meeting that they would like to see additional details and specificity in the MRSWMP. Water Board staff believe the revised MRSWMP is detailed enough to allow a reasonable evaluation of its contents, and the revised MRSWMP meets and/or exceeds the Phase II General Permit requirements for all six Minimum Control Measures. The following list highlights examples from the revised MRSWMP that demonstrate the additional detail and specificity included in the revised MRSWMP. Since the May 2005 Water Board hearing, the Monterey Regional Group has developed and included the following information/documents in the MRSWMP:

1. Protocols for responding to reports of illegal discharges and illicit connections.
2. Inventory of businesses and industries to be monitored for illicit discharges
- 3.
4. Protocols for taking action against illicit connectors/dischargers
5. Illicit connection training program and materials.
6. Currently working on an agreement with 1-800-Cleanup, for illicit connection hotline.
7. Guidance document for illegal disposal activity policies and procedures.
8. A list of RV & boat storage and launch areas.
9. Inspection checklists for RV and boat storage and launch areas.
10. A template ordinance for adoption by all members, including Attachment 4 provisions.
11. A guidance document for policies and procedures pertaining to construction sites.
12. Construction site plan review and inspection procedures.
13. Progressive enforcement protocols.
14. Procedures for receipt of public information, including protocols for

proper response to received information.

15. Post-construction BMP policies and procedures guidance document.
16. Plan review and inspection procedures for development projects.
17. Procedures for proper disposal of used motor oil.

The Monterey Regional Group worked on many aspects of the MRSWMP to include additional details and specifics. The revised MRSWMP contains documents that, in previous MRSWMP versions, were scheduled for development. The development of procedures, protocols, and guidance will allow for efficient implementation of the MRSWMP.

Water Board staff, the wording of the General Permit, and direction from the EPA guidelines allow and encourage permittees to join together and create unified groups to meet permit requirements and carry out regional Storm Water Management Programs. However, having multiple permittees with varying population sizes and make-up, budgets, and water quality issues also contributes to the difficulty of providing intense detail in the MRSWMP. Collaborative efforts result in environmental benefits by producing natural resource protection programs that cross political boundaries, address problems holistically, and use resources more efficiently. The quandary comes in that the MRSWMP must, by nature, be flexible enough to adapt to all the varying permittees' needs, yet be specific enough to meet the letter and the intent of the law.

The intent of the Storm Water General Permit is to protect water quality through storm water management programs that are implemented over a five-year period. The General Permit intends for storm water programs to address and abate local pollutants of concern.

Examples of specific BMPs included in the MRSWMP that address pollutants associated with Clean Water Act 303(d) listed waterbodies include:

- The Our Water Our World program

- targeting pesticides;
- Employee training for landscaping practices to reduce nutrient and pesticide discharges;
  - The construction programs and street sweeping programs to reduce sediment/silt;
  - Public education and outreach regarding pet waste to reduce pathogens;
  - The RV and boat inspection program to reduce pathogen sources; and
  - The post construction design standards that will reduce sediment, metals, and nutrient discharges from new development.

Staff's recommendation includes requiring a list of changes to the SWMP. The Monterey Regional Group has advised staff that these requirements are acceptable.

In summary, Water Board staff believe that the revised MRSWMP, on the whole, meets or exceeds MEP and the minimum requirements set forth in the Phase II General Permit; that there is ample evidence that the objective of the Monterey Regional group is to comply with the letter and the intent of the General Permit; and finally, that the level of detail in the revised MRSWMP is adequate for reviewers to understand and evaluate. The Monterey Regional Group has demonstrated they intend to develop and implement a program that will reduce pollutants to the maximum extent practicable.

#### IX. COMMENTS

The Storm Water Management Plan was posted to the State Water Board website, [http://www.swrcb.ca.gov/stormwtr/sm\\_municipal\\_swmp.html](http://www.swrcb.ca.gov/stormwtr/sm_municipal_swmp.html), and Regional Water Board website, <http://www.swrcb.ca.gov/rwqcb3/>, and a notice was electronically mailed on November 16, 2005, to all persons listed on the interested parties list. Comments for the MRSWMP were due back to the Water Board by December 16, 2005.

Water Board staff received one letter in

response to the November 2005 request for comments.

Water Board staff received a report generated by the NRDC and the Ocean Conservancy titled "A Practical Plan for Pollution Prevention: Urban Runoff Solutions for the Monterey Region" (Report) in November 2005, which addressed the April 2005 version of the MRSWMP. The Report documents storm water programs in place in nine California communities, one storm water program from a community in Georgia, and the Model Urban Runoff Program. The Monterey Regional group responded to the points raised by the Report in a December 15, 2005 letter (Attachment 6). Water Board staff believe the Monterey group's letter provides an accurate and fair response to the points raised in the Report.

#### X. PUBLIC HEARING

The Water Board will hold a public hearing to consider enrolling the Monterey Regional Group in the Phase II Storm Water Permit. The public hearing is scheduled to be held on February 9, 2006, in Salinas, California. Exact location address and Water Board hearing agenda will be posted to the Water Board website, <http://www.waterboards.ca.gov/centralcoast/>.

Further information regarding the conduct and nature of the public hearing concerning this draft order may be obtained by writing or visiting the Central Coast Regional Water Quality Control Board office, at 895 Aerovista Place, Suite 101, San Luis Obispo, CA 93401, attention Ryan Lodge, (805) 549-3506, or [rlodge@waterboards.ca.gov](mailto:rlodge@waterboards.ca.gov).

#### XII. RECOMMENDATIONS

Adopt Board Resolution R3-2006-0022 accepting the October 2005 Monterey Regional Storm Water Management Program as complete, approve Monterey Regional Group enrollment in the Phase II General Permit, and require the Monterey Regional

Group to make the following recommended changes:

1. The MRSWMP should list the actual MS4s or MS4 areas that are required to apply Attachment 4 Design Standards including Castroville, Prunedale, Sand City, Pacific Grove and the City of Monterey.
2. Include an additional BMP in the Pollution Prevention/Good Housekeeping MCM for Municipal Operations section for employee training, covering overall pollutant minimization from landscaping and lawn care management activities.
3. Step 4 of the construction site plan review and inspection procedures on page E-108 must be modified to indicate Monterey Regional Group members will pursue enforcement action to rectify deficiencies.
4. The MRSWMP must include public education and outreach materials specifically related to proper disposal of cat waste due to concern about toxoplasma gondii parasites in sea otters.
5. Include a training outline at the beginning of Appendix F.
6. Replace references to Attachment E with references to Appendix E.
7. Remove the last paragraph on MRSWMP page 4-14 regarding single fiscal year budgets.

### XIII. ATTACHMENTS

The Attachments to this Staff Report have been provided electronically for the Board Members. The attachments to this item are available on the Water Board website, <http://www.waterboards.ca.gov/centralcoast/Permits/Index.htm>, or you may reach Ryan Lodge at the above-listed contact to arrange a document review in person, at the Water Board offices.

1. The October 31, 2005, Monterey Regional Storm Water Management Program
2. Natural Resources Defense Council and the Ocean Conservancy November 2005 report, "A Practical Solution for Pollution Prevention: Urban Runoff Solutions for the Monterey Region."
3. Natural Resources Defense Council December 16, 2005 comment letter
4. Water Board staff response to NRDC Comment Letter for Monterey Regional Storm Water Program
5. Water Board staff response to NRDC and Ocean Conservancy Report
6. Monterey Regional Group response to the NRDC and Ocean Conservancy Report

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