

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

STAFF REPORT FOR REGULAR MEETING OF DECEMBER 7, 2007

Prepared November 15, 2007

ITEM NUMBER: 9

**SUBJECT: Municipal Storm Water Regulation and Program
Management- Strategy to Enroll Remaining Traditional MS4s
under Phase II NPDES Permit**

SUMMARY

The Central Coast Regional Water Board has within its jurisdiction 116 municipal separate storm sewer systems (MS4) subject to the Phase II General Permit for Municipal Stormwater (General Permit). The General Permit requires MS4s to prepare and submit Storm Water Management Programs (SWMPs). The SWMPs are reviewed and approved by Board staff, may be reviewed by the public, and may require approval by the Water Board at a public meeting. Consequently, staff, the Board, and the public spend considerable time reviewing and discussing each SWMP on an individual basis.

Four years into the General Permit cycle, the Water Board has approved eight SWMPs and 102 await approval (the total awaiting approval is 102, not 108, because some of the MS4s are grouped together). To adequately protect surface waters on the Central Coast, it is critical to enroll all designated MS4s in a storm water permit because improved water quality depends on implementation of programs that are effective at managing urban runoff.

Twenty-four of the 102 SWMPs awaiting approval are for 33 "designated" and "traditional" municipal storm water dischargers. These are small municipalities automatically designated by the U.S. EPA (referred to as Attachment 1¹ MS4s), or cities, counties, and unincorporated communities located in sensitive areas and designated by the Central Coast Water Board (referred to as Attachment 2² MS4s). The remaining SWMPs are associated with 78 "non-traditional" storm water dischargers, including prisons, military facilities, school districts, and universities (referred to as Attachment 3

¹ Attachment 1 – MS4s that were automatically designated by US EPA pursuant to 40 CFR section 122.32(a)(1) because they are located within an urbanized area.

² Attachment 2 – Traditional small MS4s that serve cities, counties, and unincorporated areas that are designated by the Central Coast Water Board. The Water Board considered population density, growth or growth potential, contribution of pollutants to an interconnected permitted MS4 or to waters of the U.S, and discharge to sensitive water bodies, in designating these MS4s.

MS4s; see Attachment 1 of this staff report).

This staff report presents staff's strategy to enroll the remaining 24 Attachment 1 and 2 MS4s. We propose to do this over a period of just less than two years, beginning with a notification of our strategy (described below) this month (December 2007), with the first enrollments of MS4s in the first quarter of 2008, and concluding with final enrollments in the third quarter of 2009. Enrollment of the 78 Attachment 3 MS4s will be discussed in a subsequent staff or Executive Officer's report.

DISCUSSION

Background

At the October 19, 2007 Board Meeting, staff recommended Board approval of a plan to involve stakeholders in the development of a more efficient way to regulate MS4s. Board members and stakeholders from the regulated community and non-governmental organizations cited delays in approving SWMPs in their opposition to staff's stakeholder involvement strategy. Board members questioned whether the process would actually resolve issues that have up to this point slowed the pace of SWMP approval. The Board directed staff to schedule SWMP approvals as soon as possible and to explore other alternatives for resolving the various issues that inhibit the timely enrollment of MS4s under the General Permit.

The enrollment strategy presented here addresses the principal concerns of the Board and stakeholders. This strategy:

- Follows an aggressive schedule for SWMP review and approval concluding with all Attachment 1 and 2 MS4s enrolled by the third quarter of 2009.
- Shifts emphasis of SWMP review and approval to critical water quality challenges facing MS4s.
- Prioritizes enrollment of Attachment 1 and 2 MS4s over Attachment 3 MS4s.
- Assembles MS4s into enrollment cycles based on multiple attributes, including: geographic location, watershed, water quality priorities, and MS4 storm water program status.
- Imparts lessons learned from previous SWMP review/approvals and from related regulations throughout the State.

Proposed Approach

Staff's strategy to enroll the remaining 24 Attachment 1 and 2 MS4s begins by grouping the MS4s, then scheduling each group for SWMP review and approval. Staff grouped the MS4s into eight groups based on the MS4s' inherent similarities, geographic location, associated watershed, and uniqueness (e.g., the City of San Luis Obispo is the only member of its group, since other MS4s in San Luis Obispo County have greater affinity for each other and are assigned to the Coastal San Luis Obispo group and the Upper Salinas group) (Table1).

Table 1: Enrollment Cycles for Attachment 1 and 2 MS4s

Cycle	Name	MS4	Number of SWMPs	Projected Board Approval Date & Location
1	City of Santa Maria	Santa Maria	1	2008 – 3 rd Quarter San Luis Obispo
2	Coastal Santa Barbara County	Goleta Carpinteria Santa Barbara UC Santa Barb. (UCSB)*	3 (4 if UCSB)	2008 – 4 th Quarter Santa Barbara
3	Santa Cruz Mountains and Coast	Santa Cruz County Capitola Soquel Aptos Ben Lomond Boulder Creek Live Oak Felton Coralitos Watsonville City of Santa Cruz Scotts Valley UC Santa Cruz (UCSC)*	4 (5 if UCSC)	2008 – 4 th Quarter San Luis Obispo
4	Coastal San Luis Obispo County	Arroyo Grande Grover Beach Pismo Beach Oceano Morro Bay Baywood – Los Osos	6	2009 – 1 st Quarter San Luis Obispo
5	Upper Salinas	King City Templeton Atascadero	3	2009 – 1 st Quarter Salinas
6	City of San Luis Obispo	City of San Luis Obispo	1	2009 – 2 nd Quarter San Luis Obispo
7	Upper Pajaro	Gilroy San Martin Santa Clara	2	2009 – 3 rd Quarter Watsonville
8	Santa Ynez	Lompoc Buellton Solvang Vandenberg AFB*	3 (4 if VAFB)	2009 – 3 rd Quarter San Luis Obispo

*Staff will determine the appropriateness of including these large non-traditional MS4s in the respective MS4 group.

Staff scheduled the MS4 groups as “enrollment cycles” spanning a two-year period. Staff based the schedule on multiple factors emphasizing the Central Coast Region’s water quality priorities and on the budget allocation and staffing for this process. For

example, coastal MS4s with large and/or rapidly growing populations were scheduled sooner than MS4s with smaller populations away from sensitive coastal waters.

Staff also considered the status of implementation in MS4s where, despite having no permit coverage, implementation of storm water management programs is on-going. Staff concluded that there is less water quality benefit of early enrollment under the General Permit for these MS4s than for MS4s that have delayed implementation in absence of permit coverage.

Where possible, staff scheduled enrollment cycles to conclude with Board meetings located in cities to which stakeholders would have less distance to travel. Staff's approach to grouping MS4s and scheduling enrollment cycles relies on our best professional judgment. Establishing a set schedule is an essential first step for implementing a process that will yield the desired result of having all remaining Attachment 1 and 2 communities enrolled under the General Permit.

Notification Process

A December 2007 notification process will precede the first enrollment cycle. Staff proposes to notify all remaining non-enrolled Attachment 1 and 2 MS4s about the phases of the enrollment process, the MS4 groupings, and the timing of each enrollment cycle. This one-time letter will explain the water quality goals and standards (e.g., protect functioning systems by insuring infiltration, base flow, physical/biological integrity are not compromised), expectations for approvable SWMPs, and how staff will evaluate the SWMPs.

Our notification letter will further define the Central Coast Water Boards' vision of healthy watersheds as a set of physical conditions (e.g., infiltration, base flow, physical/biological integrity) that respond to the effects of storm water. Staff will complete our evaluation of other Regions' approaches to regulating MS4s and apply appropriate elements of those strategies (e.g., establish hydromodification requirements). Staff will notify MS4s that for staff to recommend approval of their SWMPs, the MS4 must demonstrate that their SWMP will resolve the water quality issues in their community per a schedule, protect functioning systems, and verify compliance by monitoring key parameters. Where the information on water quality issues is limited or a municipality desires to conduct additional studies to refine how they will resolve specific water quality issues or protect functioning systems, the SWMP may include a plan, schedule and explanation of why that plan is necessary and how it will lead to resolution of water quality issues and protection of functioning systems.

Staff will also send the letter to all interested parties describing the enrollment strategy and staff's expectations for SWMPs. We estimate four weeks to write and distribute this letter, allowing for the holiday season.

Enrollment Cycle Phases

Staff determined that each enrollment cycle should include five phases, completed over a period of 33 to 38 weeks, depending on the complexity of the cycle (Table 2). We expect cycles with only one SWMP (Cities of Santa Maria and San Luis Obispo) to take less time to process than more complex cycles with multiple MS4s and associated SWMPs. Staff will treat each phase as a discrete, time-managed group of tasks as described below:

Phase I: Staff Assessment of Water Quality Challenges. Duration: 3 or 4 weeks

To provide the framework for a more focused and constructive SWMP review process, staff proposes to first assess the water quality challenges facing each group of MS4s. We will notify each of the MS4s in the specific enrollment cycles when we begin this assessment. Staff from various programs will jointly examine information and data to complete this assessment. We will identify the specific current storm water quality conditions affecting the group of MS4s, including, for example, the known extent and near term potential of hydromodification, and/or, documented pollution (e.g., priority pollutants, trash, and sedimentation). We will also assess risks of future water quality effects from storm water, including, for example, the effects of increased watershed imperviousness and the effects of aquatic habitat encroachment from planned land development.

In addition to spatial proximity and hydrologic connectivity of known pollution sources and risks to water quality, staff will evaluate all available information concerning: relevant CWA 303(d) impaired waterbodies; Total Maximum Daily Load implementation programs; Central Coast Ambient Monitoring Program findings; and core regulatory programs. The latter includes: performance and enforcement history of facilities and point-source dischargers; Irrigated Agriculture Conditional Waiver enrollment; and CWA Section 401 Water Quality Certifications.

Staff will also contact and meet with MS4 staff and other stakeholders as necessary to support clear definition of water quality issues affecting that MS4 or group of MS4s. Staff will then develop a final statement of our current knowledge of water quality challenges confronting the MS4 group. Our first enrollment cycles for Coastal Santa Barbara County and the City of Santa Maria will serve as a pilot project for this statement of water quality issues and we will develop a template that facilitates SWMP review in all subsequent enrollment cycles. We expect that some later MS4s will revise their SWMPs in the meantime, to be responsive to our proposed strategy.

Phase II: Staff SWMP Review. Duration: 3 or 4 weeks

Using the statement of our current knowledge of water quality challenges, staff will commence review of the SWMPs that MS4s have submitted to date (we have already reviewed most SWMPs, but this review will specifically include our "water quality challenges" perspective). Staff anticipates preparing a table of required changes and/or providing a red-lined, or, marked-up electronic version identifying required changes in the SWMP. Staff will then transmit the results of the assessment of water quality and the required SWMP changes to the MS4. This letter is expected to be different in each cycle reflecting the unique circumstances of each MS4s and the wide variability in quality and content of the SWMPs they have submitted.

Phase III: MS4 SWMP Redraft. Duration: 6 weeks

Staff will request that the MS4 take up to six weeks to incorporate required changes into their final SWMP submittal. Municipalities should be informed of this timeframe and expectation to revise their SWMPs from the original notification letter as well as notification to all MS4s in the specific enrollment cycle at the onset of Phase 1: Staff Assessment of Water Quality Challenges. For municipalities that require local agency approval of their SWMP, our notification should allow the municipalities enough advance notice and time to schedule local hearings for that approval.

Phase IV: Staff Final Review and Posting of SWMP. Duration: 13 or 16 weeks

Phase IV begins when staff receives the MS4's final SWMP submittal. Staff will review it per the required changes communicated to the municipality in Phase II: Staff SWMP Review. Staff will then post the SWMP along with a table of required revisions for public review for 60 days (8+ weeks). The posting period will be extended beyond the required 30 days to allow adequate opportunity for stakeholder comment. Staff will prepare responses to public comments in three weeks.

Phase V: Water Board Action. Duration: 8 weeks.

Phase V is designed to conclude with approval of all SWMPs in the specific enrollment cycle, and enrollment of all MS4s in that group under the General Permit. The first two weeks allow for staff to prepare the staff report and resolutions addressing each MS4. The remaining six weeks are the standard Water Board Meeting agenda preparation period for items, including distribution of agenda items, receipt of and response to additional public comments and preparing to present the item at the meeting. Staff based the duration of this phase on the assumption that each enrollment cycle would conclude with a Water Board hearing. Should no one request a hearing, this phase could conclude in two weeks.

Table 2: Phases and Duration of Completing MS4 Enrollment Cycle

PHASE	Duration (weeks)	
	Simple	Complex
Phase I: Staff Assessment of Water Quality Challenges		
Staff assesses water quality Accepts input from stakeholders on water quality conditions Staff prepares statement of current knowledge of water quality challenges	3	4
Phase II: Staff SWMP Review		
Staff reviews SWMPs and red-lines text Staff sends letter to MS4, attaching marked up SWMP, explaining requirements (same language would be in resolution if MS4 does not resolve in SWMP redraft)	3	4
Phase III: MS4 SWMP Redraft		
MS4 re-drafts SWMPs	6	6
Phase IV: Staff Final Review and Posting of SWMP		
Staff reviews SWMPs	2	4
Post SWMP and table of required revisions for public review, 60 days	8	8
Staff responds to public comment	3	4
Phase V: Water Board Action		
Staff prepares Staff Report with recommendation and resolution for SWMP approval	2	2
Staff responds to additional public comment after posting Board Agenda Staff prepares Presentation for Hearing Internal Review/Adjustments up to Board Meeting	6	6
	33	38

Staff's Assumptions in Designing the Enrollment Process

Staff developed the enrollment process based on experience with past SWMP reviews and approvals, and made several assumptions about how this process could differ as we move forward. Overall, the process is predicated on the MS4s willingness and capacity to meet our schedule and proposed turn around times for SWMP revisions. Staff believe the defined schedule and phases in this process are responsive to the numerous comments from the MS4s requesting more timely approval of their SWMPs. Nevertheless, staff recognizes a variety of factors that could extend the schedule and/or alter the process, including:

- MS4s could disagree with staff's MS4 groups and propose alternative groups.
- Petitions: a petition to the State Board of a Regional Board SWMP approval has consequences for staff's ability to continue with enrollments due to the staff time required to respond to a petition and the resolution to the petition might lead to changes in assumptions about SWMP expectations.

- Staff availability: vacancies, rotations to other high priority projects, vacation, family and sick leave within the organization all have the ability to result in an inconsistent, if not inadequate, level of staffing for this project within the storm water program.
- Phase II General Permit renewal: State Board staff are currently drafting the renewal of the General Permit for Small MS4s. Should the renewed permit differ significantly from the current version, this enrollment process may require adjustments.

As with any process of this complexity, conducted over a two-year time period, staff cannot assure precise outcomes. For example, should the initial enrollments proceed on schedule as planned, staff may recognize opportunities to shorten the schedule for subsequent cycles, resulting in reaching the goal of 100 percent enrollment sooner. Alternatively, some of the factors mentioned above could extend the date by which we achieve our goal. We are therefore prepared to adapt to changing circumstances.

Conclusion

This strategy to enroll remaining traditional MS4s under the Phase II NPDES Permit is a fundamental shift from the way the Water Board has reviewed and approved SWMPs to date. The process described above eliminates the multiple SWMP review/edit iterations and negotiations that characterized our previous approach. For SWMPs that do not meet our expectations per the schedule described above, staff will draft specific resolutions or individual permits for Board consideration that will require dischargers to resolve water quality issues in their MS4 areas, protect the biological and physical integrity of watersheds, and to verify compliance in annual reports to the Water Board.

Staff will summarize this proposed strategy at the December Board meeting, and looks forward to proceeding as described in this report and in concert with any direction (changes, additions, etc.) from the Board.

Additional Information

Any questions or comments from the public or agencies regarding this staff report and the enrollment process for traditional MS4s should be directed to Dominic Roques at the Central Coast Regional Water Quality Control Board office, at 895 Aerovista Place, Suite 101, San Luis Obispo, CA 93401, attention Dominic Roques, or (805) 542-4780, or droques@waterboards.ca.gov.

ATTACHMENTS

1. Non-traditional (Attachment 3) MS4s
2. MS4 Enrollment Cycle graphic