



California Regional Water Quality Control Board Central Coast Region



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April 13, 2010

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CERTIFIED MAIL

Mr. Fred Meurer
City of Monterey
580 Pacific Street
Room 7
Monterey, CA 93940

To Mr. Meurer:

NOTICE OF VIOLATION, CITY OF MONTEREY STORM WATER DISCHARGES FROM SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEMS (MS4s), WDID NO. 3 27MS03006, MONTEREY COUNTY

The City of Monterey is in violation of waste discharge requirements contained in State Water Resources Control Board Water Quality Order No. 2003-0005-DWQ, National Pollutant Discharge Elimination System General Permit No. CAS000004, Waste Discharge Requirements for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems (General Permit). Pursuant to the California Water Code, such violation subjects you to enforcement action by the Central Coast Regional Water Quality Control Board (Central Coast Water Board).

On September 21, 2009 and September 22, 2009, PG Environmental, a USEPA contractor, staff from USEPA, and staff from the Central Coast Water Board (Audit Team) conducted an audit (Audit) of the City of Monterey's (City) stormwater management program, and observed the violations referred to in this Notice of Violation. The City of Monterey Municipal Separate Storm Sewer System Compliance Audit Report (Audit Report), including photo documentation, is attached. The City must immediately implement corrective measures to address these violations.

VIOLATIONS

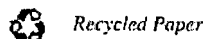
1. Failure to implement requirements for adequate BMPs to be implemented and maintained at construction sites

The Audit Team found inadequate implementation of requirements for appropriate BMPs to be implemented and maintained at construction sites.

General Permit Section D.2.d.2 requires the City to implement requirements for construction site operators to implement appropriate erosion and sediment control BMPs.

General Permit Section D.1 requires the City to maintain, implement and enforce an effective SWMP designed to reduce the discharge of pollutants from the City to the MEP and to protect water quality. The City's SWMP requires:

California Environmental Protection Agency



- construction site slopes to be protected
- erosion prevention to be the primary measure for keeping sediment on site
- slopes to be temporarily stabilized and reseeded as rapidly as possible
- down slope sediment controls
- sediment controls to be used as a supplement to erosion prevention and never as the single or primary method

The Audit Team observed construction sites that were not in compliance with SWMP requirements during the site visits. Construction sites contained inadequate temporary slope protection and down slope sediment controls. The Audit Team observed perimeter sediment controls as the primary BMP. Details and photographs of the observed site conditions are described in Section 2.2 and photographs 1 through 19 of the attached Audit Report.

This is a violation of General Permit Section D.2.d.2, which requires the City to implement requirements for construction site operators to implement appropriate erosion and sediment control BMPs. Failure to implement SWMP requirements is a violation of General Permit Section D.1.

The City must require the implementation of adequate nonstructural and structural BMPs and proper maintenance to prevent the discharge of pollutants from public and private construction sites located within the City's jurisdiction.

2. Failure to implement an effective construction site plan review program

General Permit Section D.2.d.4 requires the City to implement procedures for site plan review which incorporate consideration of potential water quality impacts.

BMP 4-2.b of the City's SWMP requires the City to use the site plan review procedures contained in the SWMP when reviewing construction projects. The SWMP contains a BMP Guidance Series for construction sites that contains BMPs for construction site planning, erosion and sediment control, as well as general site and materials management. The SWMP requires all construction sites to employ the applicable BMPs from the Guidance Series as well as additional BMPs, measures, and controls as applicable and to the maximum extent practicable to prevent pollutants from entering stormwater runoff. The SWMP also contains construction site plan review and inspection procedures. The SWMP doesn't specify the site plan review process to ensure site plans contain applicable BMPs.

The City stated during the Audit that it largely based review of submitted construction site plans and stormwater pollution prevention plans on the presence or absence of BMPs rather than the appropriateness or adequacy of proposed BMPs.

This is a violation of General Permit Section D.2.d.4, which requires the City to implement an effective construction site plan review program.

The City must evaluate the adequacy of erosion and sediment controls during the site plan review process rather than merely assessing whether controls are included in the plans.



3. Failure to implement a comprehensive and effective construction site inspection program and enforce control measures

The Audit Team found inadequate implementation and enforcement of a comprehensive and effective construction site inspection program.

General Permit Section D.2.d.6 requires the City to implement procedures for construction site inspection and enforcement of control measures.

General Permit Section D.1 requires the City to maintain, implement and enforce an effective SWMP designed to reduce the discharge of pollutants from the City to the MEP and to protect water quality. BMP 4-3.b of the City's SWMP requires the City to inspect construction sites using the SWMP's procedures and checklists and to take appropriate action to correct violations. The SWMP requires:

- construction site inspections to be documented using the Construction Site Inspection Checklist contained in the SWMP
- construction site slopes to be protected
- erosion prevention to be the primary measure for keeping sediment on site
- slopes to be temporarily stabilized and reseeded as rapidly as possible
- down slope sediment controls
- sediment controls to be used as a supplement to erosion prevention and never as the single or primary method

City staff stated during the Audit that the Construction Site Inspection Checklist contained in the SWMP was not physically completed to ensure inspections were conducted and documented adequately and consistently but was instead used as a mental guide for conducting inspections.

The Audit Team observed construction sites that were not in compliance with SWMP requirements. Construction sites contained inadequate temporary slope protection and down slope sediment controls. The Audit Team observed perimeter sediment controls as the primary BMP. Details and photographs of the observed site conditions are described in Section 2.2 and photographs 1 through 19 of the attached Audit Report.

The City stated during the Audit they were not currently undergoing enforcement actions to correct violations for any of the construction sites the Audit Team visited.

These are violations of General Permit Section D.2.d.6, which requires the City to implement effective procedures for construction site inspection and enforcement of control measures. Failure to implement SWMP requirements is a violation of General Permit Section D.1.

The City must implement adequate procedures for conducting construction site inspections to reduce pollutants in stormwater runoff from construction activities. The City must enforce violations of the City's requirements.

RECOMMENDATIONS

The attached Audit Report contains many program recommendations depicted in italic font throughout the document. Central Coast Water Board staff recommends the City adopt each



Audit Report recommendation in Section 2.2 and consider adopting the remainder of the Audit Report recommendations.

REQUIRED ACTION

The City is required to take corrective action immediately to address all General Permit violations. The City's stormwater management program must be in full compliance with the General Permit to avoid additional days of liability.

The City must maintain detailed records of actions implemented to correct each violation and the City's actions in response to each Audit Report recommendation. The City shall document its reasoning if it elects not to address any of the recommendations. The records must make reference to the Audit Report and this NOV and include supporting documentation related to corrective measures implemented by the City, including but not limited to: site plan review records; site plan review procedures; site plan review follow up actions; inspection reports; photos; corrective actions and enforcement resulting from inspections (including the sites visited during the Audit); and re-inspection reports. Central Coast Water Board staff will re-audit the City's stormwater management program periodically and review the City's program including the Audit response records. The City must stay in compliance with the General Permit and maintain records documenting compliance throughout the term of the permit, regardless of audit activities.

The City must perform an evaluation of any additional training needed for City staff to implement an effective construction site stormwater runoff control program. The City must maintain records of this evaluation and any provided training.

In addition, the City must perform an evaluation of the effectiveness of the SWMP requirements including the construction site inspection checklist to determine if they are sufficient to facilitate implementation of an effective construction site stormwater runoff control program including the issues identified in the Audit Report and NOV. If the City determines the current SWMP language is ineffective or insufficient, the City must propose changes to the SWMP to the Central Coast Water Board. To propose changes to the SWMP, the City must provide the Central Coast Water Board with a draft revised SWMP with proposed additions underlined and proposed deletions in strikeout. The City must include an explanation for each proposed change. The City must maintain records of these evaluations.

Pursuant to General Permit Section F.3, the City must keep all permit documentation as part of their records for at least five years and make the records available to the public and the Central Coast Water Board.

The Central Coast Water Board is in receipt of City of Monterey's letter dated March 15, 2010, to USEPA: *Response to your February 11, 2010 letter and Feb 3, 2010 Municipal Separate Storm System Compliance Inspection Letter*. This letter indicates the City is evaluating changes to their construction site stormwater runoff control program and has implemented some of the Audit Report's recommendations. The City must maintain specific documentation of all the actions implemented to correct each violation and the City's actions in response to each Audit Report recommendations.

Pursuant to Water Code Section 13385, violations of the General Permit subject the City to civil liability for up to \$10,000 per day for each violation. The Central Coast Water Board reserves the right to take any enforcement action authorized by law.



Please direct questions pertaining to this Notice of Violation to **Jennifer Epp** at (805) 594-6181 or at jepp@waterboards.ca.gov, or Phil Hammer at (805) 549-3882.

Sincerely,



Michael Thomas
Assistant Executive Officer

Encl: USEPA City of Monterey MS4 Compliance Audit Report

CC: (by email)

Tom Reeves, City of Monterey (reeves@ci.monterey.ca.us)

Heidi Niggemeyer, Monterey Regional Stormwater Participants Group (heidi@mrwpc.com)

Amy Miller, US EPA (Miller.Amy@epamail.epa.gov)

Greg Gholson, US EPA (Gholson.Greg@epamail.epa.gov)

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