

Regional Board Meeting
January 24, 2007

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County's urban-runoff rules getting tougher

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Region's 5-year cost may hit \$250 million

By Terry Rodgers

UNION-TRIBUNE STAFF WRITER

January 5, 2007

Water officials are poised to enact stricter regulations requiring local governments, developers and businesses in San Diego County to further reduce the amount of pollution washed into storm drains.

Analysts say the revised storm-water discharge permit could force the region's 18 cities, county, port district and airport authority to collectively spend more than \$250 million in the next five years.

In addition, the building industry contends that the tougher rules would hit consumers' pocketbooks. They say affected developers will pass on their additional expenses to home buyers and other property users.

"It could easily cost \$20,000 or more per (new-home) lot, not counting the maintenance cost over

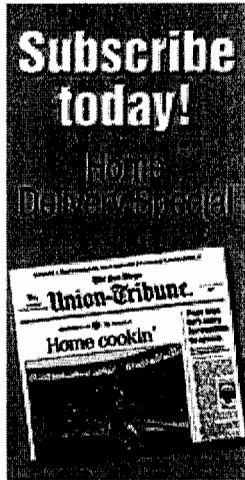
TOUGHER MEASURES

State regulators are set to adopt new rules for curbing urban-runoff pollution in San Diego County. They want:

- Local governments to inspect a wider array of commercial and

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the life of the property," said Jerry Livingston, an attorney for the San Diego Building Industry Association.

The proposed permit is "one of the most far-reaching pieces of land-use regulation ever proposed for San Diego County," said San Diego attorney S. Wayne Rosenbaum, an expert on water-quality laws. "General plans, specific plans and individual development permits are all going to be affected by this."

Across Southern California, rainfall and other sources of runoff typically carry toxins to beaches and other waterways, making them unsuitable for human contact.

The San Diego Regional Water Quality Control Board, a state agency responsible for enforcing the federal Clean Water Act, is scheduled to adopt the stepped-up standards Jan. 24.

Its new permit would compel local governments to verify that a broad range of businesses – from factories and auto-repair shops to restaurants and dry cleaners – are diverting trace metals, solvents and other contaminants from storm drains.

The water board also wants those governments to jointly establish regional plans for limiting urban runoff.

For private industry, the proposed measures would require new-home tracts and various other developments to use special devices that trap runoff and filter out many pollutants.

Water-quality officials say stronger regulations are needed because urban-runoff pollution is increasing. They point to research showing that most development involves paving over dirt with asphalt roads and concrete sidewalks, surfaces that not only can't absorb water but also speed up the flow of runoff to waterways and beaches.

Urban runoff consists of rainfall and other random sources of water, such as excess irrigation or soapy residue from car washing. As it flows across roads and other impervious surfaces, runoff collects silt, oil, bacteria and other contaminants, such as copper residue from the brake pads of vehicles.

Many people mistakenly assume that storm drains funnel runoff to sewage

industrial businesses that have potential storm-drain contaminants.

- Cities to work with one another on regional plans for reducing urban runoff.
- Various developers, including home builders, to install devices or systems for capturing runoff.

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treatment plants. In reality, most of the runoff collected by storm-drain systems from Los Angeles to San Diego is discharged along the coastline without treatment to remove pollutants.

In 1991, Congress amended the Clean Water Act to allow states to reduce urban-runoff pollution "to the maximum extent practicable." It wasn't until a decade later that water-quality officials in San Diego County adopted regulations with teeth.

Those requirements – the most stringent in California at the time – were challenged in court by the San Diego Building Industry Association. The state's 4th District Court of Appeal upheld the rules, and the California Supreme Court allowed the appellate decision to stand.

In recent years, Los Angeles, Santa Monica and other cities have jumped to the forefront of regulating urban runoff.

Ninety percent of the provisions in San Diego County's revised storm-water permit are the same as those adopted five years ago, officials for the regional water board say.

One significant change, called "low-impact development," would affect certain developments such as new housing complexes. Such places would have to incorporate special drainage features that capture rainfall for later use as irrigation or enable it to seep into the ground to replenish the local aquifer.

In addition, drainage from home lots and other buildings would have to be engineered more precisely to prevent downstream erosion. Many properties would need to install drainage systems that hold and slowly release storm water, a low-tech method for reducing pollutants. When runoff is contained, its oil, trace metals and other contaminants settle out, and sunlight helps kill much of its bacteria.

Local governments also would have more responsibilities. Besides meeting the mandate to inspect businesses, they would have to collaborate with one another in curbing runoff that pollutes large drainage basins known as watersheds. Officials would need to amend local ordinances to reflect the new requirements.

The revised storm-water permit is likely to encounter its stiffest political resistance from smaller cities and the county government.

"The county and some cities will be forced to make difficult funding decisions based on some of the requirements in this permit," said Kathleen Flannery, a county official monitoring the water board's process.

Three years ago, San Diego County sponsored a bill that would have undermined the state's ability to enforce storm-water controls. It abandoned the effort after getting flak from a range of groups.

In October, the county submitted a letter to the water board detailing its "legal concerns" about the proposed permit revisions.

County officials contend that such revisions would exceed the Clean Water Act's minimum standards for combating pollution and are thus "unfunded mandates" subject to review by a state commission. The county also argues

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that the proposed pollution controls should be put on hold until they are reviewed for compliance with the California Environmental Quality Act.

Regional board officials said the county's legal arguments are without merit.

While local governments in San Diego County have made progress since 2001, further nudging is necessary to achieve better results, said Phil Hammer, a water-board official overseeing the revised permit.

"This adds a level of accountability that wasn't there before," Hammer said.

The city of San Diego has taken a less-confrontational stance.

It spends more than \$8 million annually to comply with the regional board's urban-runoff regulations. Under the revised permit, that cost would rise to at least \$10 million each year, said Chris Zirkle, director of the city's pollution prevention program.

San Diego Mayor Jerry Sanders has approved the spending increase and is "absolutely committed" to reducing urban-runoff pollution, mayoral spokesman Bill Harris said.

Meanwhile, some environmental organizations say the proposed regulations don't go far enough.

"The regional boards statewide have only proposed Band-Aids for a problem that is only getting worse," said David Beckman, an attorney for the Natural Resources Defense Council, a national environmental group that has successfully defended urban-runoff controls in court.

For example, he said, the proposed measures fall short of requiring all new construction and major redevelopment projects to use runoff-capturing technologies.

Reducing runoff pollution is difficult because each new building, driveway and highway increases the amount of impervious surfaces.

"You have to do more every year just to reduce pollution to counteract the additional landscape being paved," Beckman said.

A 2002 study by the Pew Oceans Commission found that creeks, rivers and estuaries become biologically degraded once impervious surfaces in a watershed cover 10 percent of the land.

An analysis of satellite photos taken in 2001 found that 28.5 percent of the coastal metropolitan landscape from Oceanside to the U.S.-Mexico border was covered with impervious surfaces, said an official with the National Oceanic and Atmospheric Administration.

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From: Rosenbaum, S. Wayne [mailto:SRosenbaum@foley.com]
Sent: Thursday, December 07, 2006 4:18 PM
To: Rosenbaum, S. Wayne
Subject: NOTICE OF PUBLIC WORKSHOP AND HEARING FOR THE NEW SAN DIEGO MUNICIPAL STORM WATER PERMIT DECEMBER 13, 2006

This notice is to inform you that the California Regional Water Quality Control Board, San Diego Region (Regional Board) will conduct a public hearing concerning the San Diego County Municipal Storm Water Permit, which will replace the current San Diego County Municipal Storm Water Permit, Order No. 2001-01. Those who have reviewed the Draft Permit agree that it is one of the most far reaching pieces of land use regulation ever proposed for San Diego County. It seeks to regulate such diverse activities as grocery stores, animal facilities (riding stables, veterinarian, etc.), golf courses, building supply stores such as Lowes and Home Depot, restaurants, gas stations, individual residences, development, and redevelopment. Many of its provisions could severely limit the ability of the County and the Cities to provide low and middle income housing by imposing expensive and unproven water treatment requirements on homeowners that directly conflict with the recommendations made to the State Water Resources Control Board by its panel of experts.

In their comments to the Regional Board the County and the Cities have expressed their concerns about the financial burdens imposed by the Tentative Order. Some estimates of the costs to the County and the Cities to implement the unfunded mandates in the Order run as high as \$250,000,000 over the next five years.

The Regional Board has made available Tentative Order No. R9-2006-0011 and its corresponding Fact Sheet/Technical Report, comments on the permit and response to those comments. The documents are available at: http://www.waterboards.ca.gov/sandiego/programs/sd_stormwater.html <http://www.waterboards.ca.gov/sandiego/programs/sd_stormwater.html> . I urge you to carefully review these materials as they will effect every business, home owner and resident in San Diego County.

The Regional Board plans to conduct a public hearing to receive oral comments and adopt the Order at the Regional Board's regular meeting on December 13, 2006. The public hearing is scheduled to be held on:

December 13, 2006 10:00 AM
Regional Water Quality Control Board
Regional Board Meeting Room
9174 Sky Park Court
San Diego, California

Public participation in the permit approval process is essential to our democratic institutions. This will be your only opportunity to voice any concerns or suggestions you have to the Regional Board. Once adopted this permit will be a major factor in land use regulation and the allocation of your tax dollars for the next five years.

PLEASE FEEL FREE TO PASS THIS E-MAIL ALONG TO OTHER INTERESTED PARTIES.
I LOOK FORWARD TO SEEING YOU AT THE HEARING

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