



NATURAL RESOURCES DEFENSE COUNCIL

November 29, 2007

Via electronic mail and U.S. mail

Executive Officer and Members of the Board
Central Coast Regional Water Quality Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401

Re: Comments on Salinas Stormwater Management Plan

Dear Mr. Briggs and Members of the Board:

On behalf of the Natural Resources Defense Council and its more than 120,000 California members, we submit these comments on the latest draft of the City of Salinas's Stormwater Management Plan ("SWMP"). Our comments focus on Chapter 4 of the SWMP, entitled "Development Standards."

As noted in our September 29, 2006, letter, we support the City's efforts to implement low impact development ("LID") strategies as a means of controlling stormwater runoff and pollution. LID practices utilize various site design and treatment methods to maintain the natural hydrologic characteristics of developed sites; research has shown LID to be the most effective and cost-efficient means of managing stormwater and abating water pollution.

Unfortunately, since the time of our previous comment letter, the City seems to have done little to strengthen its SWMP by incorporating LID, nor has it otherwise submitted a SWMP that meets the requirements of the Clean Water Act or the underlying NPDES Permit No. CA0049981 ("Permit"). The current version of the SWMP is modestly changed from the 2006 draft but in most respects is nearly identical. It remains, at best, "a plan for a program," and not the regulatory document required by 33 U.S.C. Section 1314 and 40 C.F.R. Part 122.26. The SWMP merely outlines vague goals and policies, and references numerous other documents that supposedly contain real requirements for stormwater management. These other documents, however, are either non-existent or effectively useless and thus cannot provide a sufficient basis for implementing the City's NPDES Permit. In sum, Salinas continues to be in gross violation of its Permit, having failed to comply with almost every notable development or redevelopment requirement set forth in Permit Attachment 4, Section III.



These issues are recognized by staff, who have prepared a ten-page table of comments and suggestions to improve the SWMP. To the extent that the Board is considering accepting the SWMP with the proviso that staff's comments be addressed, this unfortunately does not make the SWMP adequate or provide requisite public review opportunities, as required by the Permit and the Clean Water Act. With respect to Chapter 4, a key staff recommendation is that a Kennedy/Jenks Technical Memo be incorporated into the SWMP or that the City provide an adequate alternative approach. (Table of June 2007 SWMP Analysis and Required Revisions, at 6.) We strongly support additional specificity, but the Memo at issue is not available from the Regional Board's website, nor is it available from the City's website. Moreover, by allowing the City to propose its own revised approach, staff's recommendation provides no opportunity for the interested public or the Board to be apprised of any future requirements related to Chapter 4 prior to consideration of the SWMP by the Board. It should go without saying that, here as elsewhere, the failure of the City to draft and submit for public review a document that discloses its program and its compliance with the Permit violates public participation requirements, including those set forth in *Environmental Defense Center v. U.S. EPA*, 344 F.3d 832 (9th Cir. 2003), *cert. denied*, 124 S. Ct. 2811 (2004). The Regional Board must ensure that the important principle of public review and involvement is respected prior to approval of the SWMP.

We also highlight that the City is, as you know, *severely* behind schedule in implementing its NPDES Permit. The Permit required that the City submit a revised SWMP to the Central Coast Regional Water Quality Control Board ("RWQCB") for approval within 180 days of the Permit's adoption. The Permit was adopted on February 11, 2005, making the City now *more than two years late* in obtaining approval of its SWMP. The RWQCB issued a Notice of Violation to the City on September 1, 2006, and the City seems to have done almost nothing in the interim. This is an inexcusable and illegal delay, one that requires remedy by the Regional Board and, failing that, by the U.S. Environmental Protection Agency.¹

Some of the problems with the current version of the SWMP are as follows:

- The SWMP is a vague, aspirational document that contains no implementable standards or requirements. As we stated in our last letter, the SWMP is no more than a "plan to devise a program," with references to other documents that either do not exist or do not themselves provide clear guidance and requirements. A developer looking at the SWMP would have no idea how to create a stormwater mitigation plan that includes LID strategies or otherwise complies with the Permit or SWRCB Order 2000-11.
- The City's "Stormwater Development Standards," which were supposed to be issued after receipt of the final Development Standards Plan ("DSP"), appear not to have been issued yet, even though Kennedy/Jenks submitted the DSP in July of this year. The City's failure to complete the drafting of these standards seriously impedes the

¹ We have copied EPA on this letter because of the seriousness of the City's delay in complying with the Permit and the inability, so far, of the Regional Board to identify a course by which the City will attain compliance.

City's ability to comply with the Clean Water Act because these standards seem to be the principle (if not the only) source of requirements and guidance for LID implementation.

- The SWMP states that the City is revising its Standard Specifications, Design Standards and Standard Plans document in conformity with Kennedy/Jenks's recommendations. According to the SWMP, these revisions will be completed simultaneously with the revisions to the Stormwater Development Standards. The same question thus arises: when will the City finish the revision process? The current version of the Standard Specifications, Design Standards and Standard Plans document on the City's website (purporting to be a 2008 version) contains no real discussion of LID stormwater management practices and does not provide any guidance on typical LID technologies, including, for instance, green roofs and cisterns.
- Regarding documents referenced in the SWMP that do actually exist, it is unclear how these documents have been amended to incorporate LID and the NPDES Permit's requirements—the SWMP provides no detailed description of any revisions that the City has made, nor does it specify which portions of such large documents as the City's General Plan contain anything approximating LID requirements.
- The SWMP lists so many other documents (almost all of which are either non-existent or unavailable on the City's and RWQCB's websites) that it is impossible to determine how the City's whole LID scheme fits together. The other documents referenced in the SWMP are: City Design Standards and LID Guidelines; Salinas General Plan; Salinas Specific Plans; Salinas Stormwater Development Standards; Salinas Zoning Code; Development (Design) Standards Plan; Salinas Grading Standards; Salinas Storm Water Ordinance; Storm Water Master Plan [distinct from the SWMP]; CEQA Initial Study Checklist; Salinas Standard Specifications, Design Standards and Standard Plans; Low Impact Development Design Standards; and Low Impact Development Standards Plan.
- The City apparently plans to wait until the fourth year of its NPDES Permit (2009) to implement suggestions already made by Kennedy/Jenks regarding changes to the City's zoning code to strengthen its LID component. There is no justification for this delay, and none is provided. By 2009, the City's current Permit will be almost obsolete; already identified changes should be made now.
- The DSP, which the SWMP refers to as a major source of LID guidance, is unmanageably long and appears to contain only suggestions and not actual requirements. While the City admits that the DSP is a "guidance document," there is no accompanying document that contains enforceable requirements. Without any idea of what the City would require when a developer proposes a project, there is no way for the public and the RWQCB to comment on the substance of the City's

stormwater management strategy (if in fact the City's strategy has any substance). The RWQCB cannot approve the City's SWMP when it is impossible to analyze whether the City will implement LID to an extent that meets the MEP standard and other Permit conditions.

- The SWMP mentions the City's "LID development approach," which supposedly recognizes biofiltration and disconnection between drainage and impervious surfaces as preferred stormwater treatment methods. However, it is entirely unclear what the City's LID development approach is and what it includes. Are biofiltration and disconnection only "preferred" and not required? What are the design specifications for such treatment methods and how do they work to meet the Permit's standards and SWRCB Order 2000-11?
- The SWMP claims that the City will implement "sustainable smart growth solutions," but the SWMP provides no guidelines as to what constitutes a "sustainable smart growth solution." The SWMP does not even include citations to relevant portions of other documents that might contain such guidelines.
- The City maintains that it is updating its "Storm Water Ordinance" to be consistent with its NPDES Permit and Kennedy/Jenks's recommendations, but it appears that the City has not yet done so. The City's website contains a redlined copy of the Storm Water Ordinance, and the language from this ordinance appears in the City's municipal code. However, the City's municipal code describes this ordinance as having been repealed by a subsequent order. Additionally, the SWMP contains so many typographical errors that it is impossible to determine what the City's timeline is: "A public hearing will be held for the revised Storm Water Ordinance and followed t , with adoption by the City Council." (SWMP at 4-17.)
- The SWMP states that the City will prepare a series of urban runoff pollution prevention information brochures, which apparently are critical resources for developers and the public to digest the voluminous documents that constitute the City's LID guidance. However, these brochures—like so many other documents mentioned in the SWMP—seem not to be available yet.
- The City's "menu" of BMPs for stormwater treatment is supposed to be incorporated into the City's Stormwater Development Standards document, but as this has not yet been published, there is no way to evaluate the adequacy of any BMPs that the City may select for a given project. Moreover, the City plans to establish "stipulated conditions, project designs and required BMPs" on a "project-by-project basis," but the City has not established the criteria by which each project will be analyzed, promising only that "project processing will be standardized and uniform water protection principles employed." How will processing be standardized? What will the guiding principles be? Once again, the SWMP answers these questions through

references to documents that do not exist or through circular references to the SWMP itself.

- Table 4.3 lists a number of actions that the City plans to take in order to implement its NPDES Permit, but the table overall is not particularly elucidating. Most of the action items are quite vague and refer to the numerous other documents that the City is relying on to achieve compliance with its NPDES Permit. Many of the anticipated completion dates are still months or years in the future, despite the Permit's having been issued in early 2005. Ironically, of the anticipated completion dates that have already passed, several pertain to actions that the City has apparently not yet completed.

Once the City remedies the problems listed above, it will hopefully be possible for the public and RWQCB to comment meaningfully on the City's plans to implement LID strategies in accordance with its NPDES Permit. Until that time, however, there is little that can be said about the City's substantive LID requirements because it appears that no such requirements exist.

We appreciate Regional Board staff's efforts to catalog the deficiencies of Salinas's SWMP, and their recommendations will certainly move the City toward compliance with its NPDES Permit. In the end, though, even if the City implemented all of the Regional Board's suggested changes, the SWMP would not satisfy the requirements of the Clean Water Act and Salinas's NPDES Permit. Many gaps in the City's plan would remain, especially regarding the degree to which the SWMP establishes any enforceable standards for low impact development. We urge the Regional Board not to approve Salinas's SWMP until the City has undertaken a thorough overhaul and strengthening of the current draft. We further urge the Regional Board to institute formal enforcement action against the City. At this juncture, such action clearly appears to be necessary in order to convince the City to take its Clean Water Act obligations seriously.

Sincerely,

A handwritten signature in blue ink, appearing to read "D.S. Beckman", with a long horizontal flourish extending to the right.

David S. Beckman
Senior Attorney

cc: Alexis Strauss, Director, Water Division, U.S.E.P.A. Region 9