



NATURAL RESOURCES DEFENSE COUNCIL

December 16, 2005

Electronic Mail and U.S. Mail

Chair Jeffrey S. Young and Members of the Board
Central Coast Regional Water Quality Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401

Re: Monterey Regional Storm Water Management Program

Dear Chair Young and Members of the Board,

When it reviewed the previous draft storm water program for the Monterey Region, one of the State's most extraordinary coastal resources, the Board recognized that the proposed program did not go far enough to incorporate specific measures that would protect water quality on the Monterey Peninsula. The Board, therefore, offered the municipal-permittees an opportunity to improve the program and re-submit it for consideration by the Board. On behalf of the Natural Resources Defense Council ("NRDC") and its more than 100,000 California members, we submit the following comments regarding the redraft of the Monterey Regional Storm Water Management Program ("MRSWMP") required by the Board earlier this year. NRDC thanks you for the opportunity to review and provide comments on the municipal-permittees' resubmittal of a draft MRSWMP.

Although we previously requested a hearing, in accordance with procedures provided by the State Water Resources Control Board ("State Board") and Central Coast Regional Water Quality Control Board electronic notification, NRDC hereby requests that a public hearing be conducted by the Central Coast Regional Water

www.nrdc.org

1314 Second Street
Santa Monica, CA 90401
TEL 310 434-2300 FAX 310 434-2399

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**Item No. 5 Attachment No. 3
February 9-10, 2006 Meeting
Monterey Regional Stormwater
Management Plan**

Quality Control Board (“Regional Board”) regarding the adequacy of the MRSWMP.¹ Such a hearing is necessary because, unfortunately, the proposed MRSWMP still suffers from the same basic flaws as previous drafts. Indeed, the draft before the Board today fails to incorporate a range of Best Management Practices in use in similarly-situated communities and ignores most of the suggestions included in a report NRDC and the Ocean Conservancy prepared at the Board’s request, entitled “A Practical Plan for Pollution Prevention: Storm Water Solutions for the Monterey Region” (hereinafter referred to as “A Practical Plan for Pollution Prevention”).

Despite the revisions, we remain greatly disappointed with the draft MRSWMP. The MRSWMP programs still fail to meet the federally mandated maximum extent practicable (“MEP”) standard. It still fails to assure or even commit to assuring that discharges of polluted storm water will not cause or contribute to the violation of the state’s own water quality standards, established to delineate the line between safe and unsafe water quality in streams, rivers, and the ocean. The MRSWMP remains a vague “plan to create a plan” without any meaningful commitments to effectively control California’s number-one source of coastal pollution—polluted urban storm water runoff. As detailed in this letter, our previous letters, the letters of Dr. Horner, as well as our report, “A Practical Plan for Pollution Prevention,” the MRSWMP remains unsupportable (and, indeed, illegal) in several aspects.

We are further disappointed with the draft MRSWMP given the detailed analysis and policy recommendations contained in our 80-page report: “A Practical Plan for Pollution Prevention.” NRDC and the Ocean Conservancy prepared this analysis in response to direction from the Board at the May 2005 hearing. As requested by the Regional Board, we analyzed the third-draft MRSWMP in comparison to what other similarly sized cities throughout California and the nation are doing to protect their waters from storm water pollution. The Report also provides a set of standard pollution prevention programs that can and should be used to cure the vague and general approach of the draft MRSWMP. Additional, commonplace pollution prevention actions that are missing from both the previous draft and this draft MRSWMP are also detailed in this report. Collectively, the Reports’ “Clean Water, Healthy Economy” program elements provide a practical way forward, and each of them were recommended for inclusion in this version of the MRSWMP. In essence, the report sets forth program provisions that can easily be incorporated into the MRSWMP.

¹ Electronic Letter from Bill Hereth, Staff, SWRCB (Nov. 16, 2005); Electronic Letter from Donnette Dunaway, Staff, Regional Board (Nov. 16, 2005), attached to this letter for inclusion in the record. In addition, we incorporate our April 16, 2004, January 10, 2005, March 29, 2005, and April 29, 2005 comment letters, two analyses submitted by Dr. Richard Horner, documents supporting those letters and testimony at the May 2005 Regional Board hearing. We also incorporate all of our detailed analysis and recommendations contained in “A Practical Plan for Pollution Prevention,” which we expressly adopt as comments during this proceeding regarding the required elements of the MRSWMP. We have also attached our report for inclusion in the record.

The report discusses seven overarching General Principles as well as 45 "Clean Water, Healthy Economy" Action Items. In efforts to make our analysis useful in the next draft of the MRSWMP, we sent our report to the municipal entities, the Regional Board staff, and other interested parties well before this fourth draft was submitted to the Region Board. Sadly, not only did the entities fail to incorporate the vast majority of our report's analysis and recommendation, the Regional Board staff seems poised to yet again recommend approval of the MRSWMP, even though the draft still fails to meet the maximum extent practicable standard and protect water quality. *The preparation of such a significant policy document by environmental organizations at the request of a Regional Board is, to our knowledge, unprecedented during a permit proceeding. We respectfully suggest that if the Board seriously values the participation of citizens and interested parties, it must direct both its own staff and the municipal-permittees to incorporate the well-supported suggestions and comments contained "A Practical Plan for Pollution Prevention."*

In fact, for the General Principles, the draft MRSWMP incorporates *1 of the 7 General Principles*. For the 45 "Clean Water, Healthy Economy" Action Items, the draft MRSWMP incorporates a mere *7 out of 45 Action Items*—only 15 percent. In several instances, this draft of the MRSWMP is even weaker than the previous draft. The draft MRSWMP still fails to be a comprehensive program for controlling and preventing polluted urban storm water runoff in the Monterey Region.

This draft MRSWMP, like the previous drafts, continues to pool together already pre-existing programs, incorporate them into one document, and title it "the MRSWMP." We recognize that about six new documents were prepared in Appendix E of this draft. However, these new documents are "Protocols", "Policies", "Procedures" or "Guidance". These documents fail to specify what actions are required to control storm water runoff to the Maximum Extent Practicable and to protect water quality. Equally important, as discussed in the specific comments below, these documents fail to meet the MEP standard and protect water quality since they do not implement basic provisions that are used throughout the state and county. As we have stated previously—and demonstrated in our 80-page analysis—the MRSWMP must have its own definitive programs with milestones for effectively controlling polluted urban runoff. Despite the additional documents in the appendix and the global deletion of the word "develop", the MRSWMP remains at best "a plan to create a plan." The comments below analyze this current draft and compare it with analysis and recommendations in "A Practical Plan for Pollution Prevention," demonstrating how woefully inadequate the draft MRSWMP remains.

In this connection, the United States Environmental Protection Agency just issued "National Management Measures to Control Nonpoint Source Pollution from Urban Areas" (November 2005). Even though the title of this document references nonpoint sources of pollution, the text of the document makes clear that the "management measures and practices herein can serve as a resource in developing a Phase II community's storm water management

program” and that the Phase II programs may be even more stringent.² A quick comparison of EPA’s recent guidance to the draft MRSWMP demonstrates further that the MRSWMP is woefully inadequate even as compared to nonpoint source controls (versus storm water which is a point source). For instance, EPA’s document discusses scores of detailed management practices that are entirely absent in the MRSWMP.

Based on the reasons stated in this letter, NRDC’s previous letters, and Dr. Horner’s letters, we respectfully contend that the Regional Board should not, and cannot, approve the MRSWMP because doing so would be arbitrary and capricious, an abuse of discretion, and otherwise contrary to law. In this connection, it has long been recognized in California that conclusory statements such as those that dominate the MRSWMP do not amount to substantial evidence on which a regulatory agency may rely in making decisions. See, e.g., *Mountain Lion Coalition v. Fish and Game Commission* (1989) 214 Cal. App. 3d 1043. Instead, the Board should order its staff to take control of this long-delayed implementation process and edit the MRSWMP so it contains an adequate program. Staff has to guide its efforts detailed comments and program components contained in our various comment letters and in our report, “A Practical Plan for Pollution Prevention,” which in many cases can be extracted fully developed from these documents and placed in the MRSWMP.

OVERALL COMMENTS

General Principles. The following General Principles as discussed in “A Practical Plan for Pollution Prevention” equally apply to this draft of the MRSWMP:

The draft Monterey Proposal must assure that the program, when implemented, will assure that discharges do not cause or contribute to a violation of an applicable water quality standard. As mandated by the Clean Water Act, the General Permit directs the program to be designed to protect water quality, require discharge prohibitions, and meet receiving water limitations that require compliance with water quality standards. The draft Monterey Proposal must design its BMPs and programs to ensure the protection of water quality and meet the MEP standard.

The draft Monterey Proposal must explicitly incorporate Receiving Water Limitations language in Attachment 4 of the General Permit for all municipalities.

The draft Monterey Proposal must assure that the programs are “designed to reduce the discharge of pollutants . . . to the Maximum Extent Practicable (MEP).” (33 U.S.C. § 1342; 40 C.F.R. § 122.34.) Each BMP as well as groups of BMPs must be based on the

² U.S. Environmental Protection Agency, “National Management Measures to Control Nonpoint Sources of Pollution from Urban Areas” (Nov 2005), attached to this letter for inclusion in the record. This report is also available at:
http://www.epa.gov/owow/nps/urbanmm/pdf/urban_guidance.pdf.

Maximum Extent Practicable standard. The draft Monterey Proposal must contain a definition and description of the MEP standard as adopted by the State Water Resources Control Board. As defined in State Board precedent order 2000-11, "MEP requires permittees to choose effective BMPs, and to reject applicable BMPs only where other effective BMPs will serve the same purpose, the BMPs would not be technically feasible, or the cost would be prohibitive. The definition must include the requirement that permittees must choose effective BMPs, and reject applicable BMPs only where other effective BMPs will serve the same purpose, the BMPs are not technically feasible, or the cost is prohibitive."³

The draft Monterey Proposal must assure that the program reflects the baseline provisions as set forth in the MURP. In 1998, the City of Monterey, City of Santa Cruz, California Coastal Commission, Monterey Bay National Marine Sanctuary, Association of Monterey Bay Area Governments, and the Central Coast Regional Water Quality Control Board—many of the same entities that are responsible for the draft Monterey Proposal—prepared the Model Urban Runoff Program (MURP). The MURP by its own definition is "A How-To Guide for Developing Urban Runoff Programs for Small Municipalities. Yet, the differences between the MURP and the draft Monterey Proposal are astonishing. In fact, it is puzzling how a city can recommend basic—"model"—program provisions for other similarly situated cities, yet fail to adopt its own "model" program. Indeed, the very preparation of the MURP stands as an admission by these parties that, at minimum, each and every component of the MURP is consistent with the MEP standard and, as such, is mandatory for Phase II cities. As such, the programs and provisions in the draft Monterey Proposal must be revised to reflect the provisions as set forth in the MURP.

The draft Monterey Proposal must include a section addressing priority pollutants of concern. This section must include pollutants causing impairment of water bodies, as well as pollutants generated by priority target industries and activities, such as automotive maintenance, restaurants, and landscaping. For example, Solano County, another Phase II area, includes such a list of "Pollutants of Concern" in its storm water management program, and commits to improving its list as new information becomes available.⁴

The draft Monterey Proposal must schedule its BMP implementation using monthly, rather than just yearly, timeframes. A more detailed delineation of how long an implementation activity is likely to take will facilitate timely implementation and prevent

³ *In re Cities of Bellflower, et al.* SWRCB 2000-11 at 20.

⁴ Solano County, Storm Water Management Plan for the National Pollutant Discharge Elimination System (NPDES) Phase II: A Guideline for Implementation of Solano County's Phase II Storm Water Management Plan (February 23, 2003) at 17.

delay. Numerous California Phase II programs, including those of Placer County and San Joaquin, delineate their activities monthly or quarterly rather than just annually.⁵

In addition to the General Principles, these overall comments apply:

Risks of Storm Water Pollution. As with the previous draft, the MRSWMP does not recognize the seriousness of storm water pollution and the risks it poses. Again, the MRSWMP diminishes the description of storm water impacts. For example, the draft still states, "Although these problems provide the basis and rationale for the Phase II Program, *it is important to note that these problems do not necessarily exist or pertain to the storm drains that are the subject of the MRSWMP.*" (MRSWMP at 2-1 (emphasis added).) In other areas, the municipalities assert, "Receiving water quality in the geographic area covered by the MRSWMP is generally considered *excellent, especially marine and by water*, with relatively few impairments." (MRSWMP at 4-9) These conclusions are rebutted by the evidence (such as acutely toxic discharges documented annually in the region) and thus are contrary to law. They are also belied by the most recent "First Flush" data, which showed that nine of fourteen sites exceeded bacteria levels during dry weather months and that the high pollutant concentrations existed in the areas covered by the MRSWMP.⁶ In addition to this data, the Monterey Region is documented to have many impaired waterbodies, including the coastline, on California's List of Impaired Waters.⁷ Equally important, several major scientific studies have identified the Monterey Region as a "hot spot" for sea otter deaths and have linked these deaths to the region's poor water quality.⁸

Limitations of Table 4-1. Chief among the flaws with the MRSWMP is the limitations presented by table 4-1 and the 50 references to "Appendix E". Interestingly, this draft

⁵ Placer County, County of Placer Storm Water Management Plan 2003-2008 at 19, *et seq.*; San Joaquin County, Storm Water Management Program (September 30, 2003) at 6, *et seq.*

⁶ Dry Weather Monitoring and First Flush Monitoring, Monterey Bay Sanctuary Citizen Watershed Monitoring Network (2004), attached to this letter for inclusion in the record.

⁷ State Water Quality Control Board 2002 303(d) List of Impaired Waters; and Recommended Listings for the 2006 303(d) List, attached to this letter for inclusion in the record. (<http://www.waterboards.ca.gov/tmdl/docs/2002reg3303dlist.pdf>; http://www.swrcb.ca.gov/tmdl/docs/303d_update/r3_v2.pdf)

⁸ Miller, et al., "Coastal freshwater runoff is a risk factor for *Toxoplasma gondii* infection of southern sea otters (*Enhydra lutris nereis*)," 17 International Journal for Parasitology 997, 1001 (2002); C. Kreuder, et al., "Patterns of Mortality in Southern Sea Otters (*Enhydra Lutris Nereis*) from 1998-2001," 39(3) Journal of Wildlife Diseases 495 (2003); Arkush, et al., "Molecular and bioassay-based detection of *Toxoplasma gondii* oocyst uptake by mussels (*Mytilus galloprovincialis*)," 33 International Journal for Parasitology 1087, 1088 (2003); Conrad, et al., "Transmission of *Toxoplasma*: Clues from the study of sea otter as sentinels of *Toxoplasma gondii* flow into the marine environment," 35 International Journal of Parasitology (2005), all articles are attached to this letter for inclusion in the record.

MRSWMP asserts, "The Participating Entities put considerable effort into further revising the MRSWMP to respond to the issues raised by the RWQCB Board members, and believe that the BMPs contained in Table 4-1 constitute a comprehensive program that exceeds the requirements and objectives of the General Permit." (MRSWMP at 4-9.) However, Table 4-1 largely repeats the language in the previous draft MRSWMP and only lists the activities to be undertaken in a general fashion with an entire "Permit Year" as a deadline. Table 4-1 fails to clearly state the requirements and commitments necessary for an adequate MRSWMP. To this end, the MRSWMP remains vague and uncertain. The MRSWMP cannot relegate core program elements into an appendix, apparently making nearly all program elements "discretionary". Rather, these programs must set forth clear requirements and commitments in a comprehensive and organized manner.

Appendix E. The MRSWMP refers to "Appendix E" or "Attachment E" at least 50 times. It is unclear whether these are references to the same document. In any case, this is an unworkable and confusing system for a public participation process. Appendix E is over 170 pages and table 4-1's BMP "Implementation Plan" column refers generally to documents "contained in Appendix E." How is a reviewer supposed to sort through the over 170 pages in Appendix E to know which corresponding pages go with which program? Even the table at the beginning of Appendix E is confusing because it doesn't approach the programs in a comprehensive manner. In *Environmental Defense Center v. EPA*,⁹ the Ninth Circuit emphasized that a storm water management plan, which "contain[s] the substantive information about how the operator of a small MS4 will reduce discharges to the maximum extent practicable", is an inherent part of the storm water permit. Accordingly, the MRSWMP is subject to the full suite of public participation requirements of permitting under the Clean Water Act. However, from the draft MRSWMP and general references to Appendix E, the public cannot determine whether the program will meet the MEP standard and protect water quality. Neither can the Board or its staff.

Cursory Revisions. Even a quick review of the MRSWMP, especially Table 4, reveals that only cursory and superficial revisions to MRSWMP have been made. Following the May 2005 Regional Board hearing, the Board directed that whole-scale revision of the MRSWMP must be done. Rather, the municipalities have in many instances uniformly deleted the word "develop," but left the prior vague language. The Clean Water Act and the General Permit require the municipalities to do more in order to meet the Maximum Extent Practicable standard and protect water quality.

Lead Agency/Implementers. This most recent draft of the MRSWMP adds another layer of confusion as to who the lead agency and/or implementers of the MRSWMP are. The Monterey Regional Water Pollution Control Agency ("MRWPCA") is identified as the new lead agency for the MRSWMP. (MRSWMP at 3-1.) Yet, table 4 fails to recognize this fact or even address the agency as one of the implementers. At the same time, Table 4 still assigns three

⁹ *Environmental Defense Center v. EPA*, 344 F.3d 832, 857-858 (9th Cir. 2003).

ambiguously named groups as the implementers: "MRSWMP Group", "MBNMS", and "MS4 Administration." It is impossible to tell which entity is responsible for implementation. This is a clear and obvious violation of the Clean Water Act as it constitutes, among other things, a failure by the "permittees" to clearly and definitely apply for coverage under the Phase II storm water program.

Weak Excuses. In efforts to explain why this draft of the MRSWMP remains a "plan to create a plan" lacking detailed requirements and commitments, the municipalities offer two bases:

- "It should be noted that the Participating Entities covered by the MRSWMP are public agencies. As such they are subject to single fiscal year budgets which do not allow them to make future year financial and resource commitments for programs such as the MRSWMP." (MRSWMP at 4-41.)
- The Participating Entities will use the annual report update process "to update and revise their BMPs and Measurable Goals." (MRSWMP at 4-1.)

These comments betray the submitting entities' complete lack of understanding regarding their obligations, in that they wish to rely on factors affecting every municipal permittee in the nation as a rationale for unacceptable and illegal low performance. Most municipal programs are governed by an annual budget process. However, this annual process cannot serve as a basis for proposing an illegal SWMP that fails to meet the Clean Water Act requirements of MEP and protecting water quality standards. If this basis were applied uniformly, then all municipalities would be excused from implementing programs with detailed requirements and commitments. This is clearly not the case, as demonstrated in "A Practical Plan for Pollution Prevention," which discusses existing SWMP elements that have detailed requirements and commitments. Second, relying on the annual reporting requirement as a basis to circumvent Clean Water Act requirements misuses the annual reporting requirement. The central purpose of annual reporting requirement is to assure compliance of the permit conditions through the minimum control measures. (40 C.F.R. § 122.34(g)(3)(i).) Thus, the municipalities must propose program provisions that meet the Maximum Extent Practicable Standard and protect water quality in the MRSWMP.

MINIMUM CONTROL MEASURES

MCM 1: Public Education & Outreach

Table 4's description of the Public Education and Outreach Program is nearly identical to the previous draft of the MRSWMP. The only distinction is that under the implementation plan, the word "develop" has been deleted and leaves "Implement the comprehensive Public Education & Outreach Program contained in Attachment E." However, the Public Education & Outreach Program in Appendix E is exactly the same as the previous draft of the MRSWMP. Thus, it is unclear what if anything has been "developed" for this program since the May 2005 workshop. More importantly, Public Education and Outreach Program continues to remain

impermissibly vague and fails to meet MEP and protect water quality. In this connection, as analyzed in detail in "A Practical Plan for Pollution Prevention" (Practical Plan at 13-18), the MRSWMP must:

- Revise the program intent to tie in to objectives and measurable outcomes;
- Expand the program to target a more diverse set of audiences, including tourists;
- Revise the program topics to include a broader range of issues;
- Develop and incorporate basic education commitments for years 2-5.

MCM 2: Public Participation & Involvement

Table 4's description of the Public Participation & Involvement Program is nearly identical to the previous draft of the MRSWMP, with the exception of minor changes, such as references to the appendix as "Appendix E" instead of "Appendix F" and addition of a new implementer, "MS4 Administration". Notably, the appendix documents remain exactly the same. Hence, the Public Participation & Involvement Program has not been revised and continues to remain impermissibly vague and fails to meet MEP and protect water quality. In this connection, as analyzed in detail in "A Practical Plan for Pollution Prevention" (Practical Plan at 19-27), the MRSWMP must:

- Revise program to include additional detail and to make specific commitments for years 2-5;
- Revise objectives to focus on public input and feedback, rather than education;
- Provide more time for public review of annual reports before workshops;
- Modify format of second public workshop to facilitate collection of ideas and public input mid-year, at a time when the municipalities can take action;
- Promote public participation in Coastal Cleanup Day and First Flush by providing advertising and incentives for participation, in addition to financial support;
- Add a watershed stewardship program component;
- Add comprehensive watershed-based monitoring program;
- Add a Citizens Advisory Committee component.

MCM 3: Illicit Discharge Detection & Elimination

Most of the Illicit Discharge Detection & Elimination Program remains the same. For instance, like the previous draft, the MRSWMP includes a BMP implementation plan to enter into an agreement with 1-800-CLEANUP. However, 1-800-CLEANUP has no mechanism to report illicit discharges by zip code. The revisions to this program are merely perfunctory exercises that fall woefully short of meeting MEP or protecting water quality. For instance, the newly created "Protocol For Responding to Reports of Illicit Discharges and Illicit Connections" provides three ways to report illicit discharges. However, the 1-800-CLEANUP number does not allow any type of reporting; there are no lists of the City Public Works phone numbers; and there is no website address for the MRSWMP reporting page. Does the website exist? Importantly, the protocol fails to contain a required response for reports and contains an

unnecessary step to determine if the "incident is valid?" Why waste time determining if the incident is valid instead of promptly responding to a potential public health threat?

Likewise, for the "Storm water system mapping" BMP, Appendix E contains a general map of the area with outfall numbers. However, Phase II regions much smaller than the Monterey Region, like Griffin, Georgia, mapped their storm water systems *before* submitting their MRSWMP, as discussed in "A Practical Plan for Pollution Prevention."

Notably, BMP 3-3 is incomplete because it fails to include a BMP intent or BMP name/activity. This BMP also limits the inventory of business inspected to "Attachment 4" businesses. It is unclear if this is a reference to "Attachment 4" of the General Permit or another attachment 4. In any case, why limit the types of business inspected? What is the basis for limiting the types of business for inspection? Where is the commitment to stop 100% of *all* illicit discharges and connections (not just those reported)? Why haven't the business already been prioritized given the manageable number of businesses? Moreover, other types of inspection programs are entirely absent, such as a field screening program to inspect outfalls/manholes; a program to monitor and inspect the entire storm drain system; or a program to respond to sewage spills into the storm drain system.

The "Protocol for Taking Action Against Violators of the Municipality's Urban Storm Water Quality Management and Discharge Control Ordinance" and "Guidance Document for Policies and Procedures Pertaining to Illicit Connections and Illicit Discharges to Storm Water Systems" are equally flawed. Namely, both documents have no requirements and no commitments. Rather, they leave the implementation of these programs entirely to the discretion of the municipalities. Such weak implementation that lacks any requirements or commitment clearly does not meet the MEP standard or protect water quality. Just the same, it clearly provides the Board and its staff with no basis on which to make a determination that the program meets all applicable legal requirements.

The ordinance included in Appendix E is the exact same ordinance submitted with the previous draft of the MRSWMP. Like before, the ordinance serves as only a "guidance" or "template". The municipalities have total discretion. There are no requirements or necessary commitments in adopting the ordinances. Without specific requirements and detailed commitments, the ordinance BMP cannot meet MEP or protect water quality.

Again, another BMP, BMP 3.5.a is incomplete because it fails to have a BMP Intent or BMP name/activity. In addition, BMP 3.5 for RV parks and boat marinas references an inspection list in Appendix E. Although Appendix E lists pages E-101 and E-104, none of these pages discuss RV boats or marinas. The location of a RV list is unclear.

In addition to the deficiencies discussed above, the Illicit Discharge Detection & Elimination Program continues to suffer from the same deficiencies as the previous draft as discussed in detail in "A Practical Plan for Pollution Prevention," the MRSWMP must:

- Map storm drain **now**, or at a minimum, within 1 year of storm water management program approval;
- Prioritize businesses **now**, or at a minimum, within 1 year of storm water management program approval;
- Add dry-weather screening program to cover entire municipal storm sewer system;
- Commit to a follow-up/enforcement program for all illicit discharges detected;
- Add a sewage spill response program, aimed at preventing entry of sewage into the storm sewer to the maximum extent practicable;
- Add comprehensive program for inspections of existing development (commercial, industrial, residential);
- Complete storm water ordinance **now**, based on existing model ordinances;
- Ensure that storm water ordinance contains specific enforcement provisions;
- Add provisions to facilitate household hazardous waste disposal.

MCM 4: Construction Site Storm Water Runoff Control

The Construction Site Storm Water Runoff Control Program still suffers from the same inadequacies as the previous draft: it fails to include detailed requirements and commitments for implementation. Much of the program as described in Table 4 is identical to the previous draft of the MRSWMP. In addition to the global deletion of the word "develop", Appendix E includes a new document listing various BMPs for various uses. However, the use and purpose of the document is unclear. Critically, neither the program nor new document requires that any of these BMPs have to be used for any projects. To this point, BMP 4.1.a, for example states,

"Using the guidance document and model ordinance contained in Appendix E, each Participating Entity will adopt a storm water ordinance revised to be specific to each entity's needs through appropriate governing body procedures"

A key problem with this BMP, as with many others, is that the "guidance document" and "model ordinance" are not requirements for the program. The model ordinance is the same template that the municipalities submitted in the previous draft in April 2005. Likewise, the "Construction Site Plan Review and Inspection Procedures" explicitly states, "The municipality will determine how best to integrate these procedures into its existing project review process." (Appendix E-91.) Thus, there are no minimum requirements that each municipality has committed to for construction site plan review and inspections.

BMP 4-2 is incomplete because it does not have a BMP intent or a BMP name/activity. In addition, the BMP descriptions include language such as "appropriate" staff, employees, or action (BMP 4-3.a). What does "appropriate" mean? Which staff will this include? Similarly, for the inspection checklist, what guarantee is there that these checklists will actually be utilized?

In addition to the reasons listed above, Construction Site Storm Water Runoff Control Program fails to meet the MEP standard and protect water quality based on the analysis

conducted in "A Practical Plan for Pollution Prevention". In this connection, as analyzed in detail in "A Practical Plan for Pollution Prevention" (Practical Plan at 38-49), the MRSWMP must:

- Adopt construction site ordinance **now**, based on existing model ordinances, and incorporating Attachment 4 Receiving Water Limitations;
- Include General Construction, Spill Prevention Planning, Vehicle Maintenance Area, and Inspection BMPs from EPA's National Menu of BMPs;
- Expressly include requirement of reducing storm water pollution to MEP and complying with water quality standards as part of site plan review process;
- Revise program to provide for construction site inspections beginning immediately;
- Revise inspection program to provide for weekly inspections of **all** construction sites.

MCM 5: Post-Construction Storm Water Management in New Development and Redevelopment

The Post-Construction Storm Water Management in New Development and Redevelopment is largely the same as the previously submitted draft MRSWMP. Appendix E now contains a "Guidance Document For Policies and Procedures Pertaining to New Development and Redevelopment." However, like the three other documents in Appendix E, this document merely serves as guidance and gives total discretion to the municipalities in terms of implementation. The Clean Water Act and the General Permit require the municipalities to implement the post-construction program to the maximum extent practicable and to protect water quality. The current draft program, which lacks requirements and commitments, fails to meet these standards.

Further, the guidance documents have several references to documents within Attachment E, but it is unclear exactly which documents these are and how they come together has a comprehensive program to control post-construction storm water pollution. More importantly, the "Development Project Plan Review and Inspection Procedures" establishes a burdensome and unworkable procedure that fails to meet the MEP standard or protect water quality. For instance, under these discretionary procedures:

"Once an application is received, the municipality's staff will review the application for urban runoff issues, and will compare the proposed storm water pollution control measures included in the project with the New Development and Redevelopment Project BMPs contained in the current version of the BMP series."

(MRSWMP at E-99.) This procedure sets up unnecessary steps that aren't even clear. Instead, the municipalities must determine which set of BMPs can be implemented for a specific project type that are proven to be effective at protecting water quality and satisfy the MEP standard. Then, the developer has a clear understanding of which type of BMPs are required. Thus, when the application is submitted to the municipality, it is clear to all parties what is required.

Another issue that has been raised since the first draft of the MRSWMP is that all municipalities must satisfy the requirements of Attachment 4 under the General Permit. It still remains unclear which entities must comply with Attachment 4 under the General Permit. As we have repeatedly stated, all of the municipal entities in the Monterey Region must meet the Design Standards Requirements for New Development and Redevelopment under Attachment 4 of the General Permit.¹⁰ The very existence of a Monterey Regional Water Pollution Control Agency demonstrates that the relevant Municipal Storm Sewer System (the "system of conveyances") that transports storm water in the area is unitary and serves more than 50,000 people. Moreover, from a policy perspective, if the participating entities wish to take advantage of the convenience of exercising the joint application option, and to capitalize on the existence of resources of working together in this process—as they admit throughout the draft Monterey Proposal—they must be prepared to fulfill, in the aggregate, the requirements of a individual entity in their position. In this connection, it makes no sense to have different development requirements in a single region given the relatively uniform land use practices—as admitted in the draft Monterey Proposal—and identical storm water impacts. Further, it is highly likely that Design Standards will be required of all municipalities in the region in the next draft of the General Permit, given the growth rate and significant water resources in the area that are threatened by polluted urban storm water runoff. For all of these reasons, we assert again that all municipalities must under the terms of the General Permit comply with its Attachment 4 and, further, that it would be arbitrary and capricious under the circumstances that apply here to find otherwise, even if, for the sake of argument, the Board had discretion with respect to this matter.

Equally important, design standards have been adopted throughout California for both Phase I and Phase II municipalities (e.g., San Diego, San Bernardino, Los Angeles, Napa, Salinas, Placer County, Morgan Hill, Solano County). Critically, the draft Monterey Proposal cannot escape these requirements because they are explicitly mandated by the General Permit for inclusion in storm water management plans. In this connection, rather than confusing which projects are subject to the plan review process (discretionary projects versus ministerial projects), the process would be greatly simplified if all of the municipalities used the Attachment 4 requirements from the General Permit.

In addition to the reasons listed above, Post-Construction Site Storm Water Management in Development and Redevelopment fails to meet the MEP standard and protect water quality based on the analysis conducted in "A Practical Plan for Pollution Prevention". In this connection, as analyzed in detail in "A Practical Plan for Pollution Prevention" (Practical Plan at 50-62), the MRSWMP must:

- Explicitly incorporate the General Plan's Attachment 4 receiving water limitations and design standards into the storm water management program, and require compliance by all municipalities;

¹⁰ Attachment 4 also requires compliance with Receiving Water Limitations. The application of this provision is discussed in the General Comments section.

- Revise storm water management program to incorporate criteria for prioritizing developments, as well as several pre-determined high priority categories of development;
- Adopt ordinance **now**, based on existing model ordinances, and include development principles adapted directly from Attachment 4;
- Revise site plan review guidance to require a revised CEQA checklist and criteria for determining appropriate controls;
- Add provisions for inspections by municipal staff, in addition to inspection and self-certification by facility owner;
- Revise program to provide for inspections beginning immediately.

MCM 6: Pollution Prevention/Good Housekeeping for Municipal Operators

The Pollution Prevention/Good Housekeeping for Municipal Operators Program has even deleted BMPs and is more incomplete than the previous draft MRSWMP. For instance, the inspection requirement for disposal of used motor oil has been deleted under BMP 6-3. Also deleted from the program are protecting stock piles, integrated pest-management, and training on lawn care—all three practices are critical pollution prevention and control. Some BMPs like BMP 6.7.f. are weaker because requirements such as no disposal of oil filters in trash cans for municipal operations has been deleted. Similarly, BMPs 6-8 and 6-9 are weaker than they were in the previous draft because they delete some of the details for implementation that were included previously. Other parts of the program are simply incomplete. For example, the BMP Intent and BMP name/activity are missing for BMPs 6-4, 6-6, and 6-8. Moreover, other BMPs simply fail to meet MEP and protect water quality. For instance, the BMP for hazardous materials storage states “Promptly correct any hazardous materials inspection deficiencies reported by the County inspectors, who are responsible for all of the hazardous materials inspection in Monterey County.” But it is unclear what “prompt” means or what “inspection deficiencies” are. Also, the measurable goal, correcting 100% of the “noted deficiencies” within “30 days”, is entirely too long for hazardous materials that pose a serious public health threat. Again, this program like the other programs also lacks the needed commitment and requirements necessary to satisfy the MEP standard and protect water quality.

Another problem with this program is that it is entirely unclear where certain documents are. This makes it impossible to evaluate the program or determine whether it meets MEP and protects water quality. For instance, the Appendix E table of context lists, “Vehicle washing procedures” on page E-57, but page E-57 is the same model ordinance that was in the previous draft of the MRSWMP and doesn’t discuss vehicle washing procedures at all. Likewise, BMP 6.1.a states that there is a training outline and material in Appendix F. However, the training outline could not be located and the materials are a myriad of slides on education, but they are not the specific category of training that is required to meet MEP and protect water quality.

In addition to the reasons listed above, Pollution Prevention/Good Housekeeping for Municipal Operators Program fails to meet the MEP standard and protect water quality based on the analysis conducted in “A Practical Plan for Pollution Prevention”. In this connection, as

analyzed in detail in "A Practical Plan for Pollution Prevention" (Practical Plan at 63-77), the MRSWMP must:

- Revise program to provide for training of specific categories of municipal employees immediately: street sweeping operators, street maintenance crews, park maintenance crews, and municipal construction crews;
- Adopt ordinance for hazardous materials storage that incorporates existing guidelines for such storage and simultaneously develop guidance;
- Include a fully developed landscaping and lawn care program, based on existing principles articulated in the MURP or commit to developing program within one year based on these principles;
- Explicitly incorporate BMPs for automotive activities from the MURP;
- Explicitly incorporate BMPs for vehicle washing activities from the MURP;
- Include a Municipal Storm Sewer System maintenance program providing for inspection, maintenance, documentation, and disposal of waste materials;
- Explicitly incorporate BMPs for inspection and cleaning of storm drains from the MURP.

By failing to create specific BMPs, programs, and measurable goals, the participating entities fail to comply with the federally-mandated MEP standard and protect water quality. In addition, they have forfeited an opportunity to develop a well-tailored storm water management program that will ensure the efficient reduction of storm water pollution in these communities in a manner consistent with applicable discharge prohibitions and receiving water limitations. The MRSWMP cannot be approved in its current form and must be modified to contain specific program elements that meet with the requirements of the General Permit and federal law.

Thank you for the opportunity to review and provide comments on the MRSWMP. Please feel free to contact us if you have any questions.

Sincerely,



David S. Beckman, Senior Attorney
Anjali I. Jaiswal, Staff Attorney

Electronic cc: Bruce Fujimoto
Roger Briggs
Ryan Lodge
Donette Dunaway
Bill Hereth