

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

SUPPLEMENTAL SHEET FOR REGULAR MEETING OF FEBRUARY 11, 2005

Prepared on February 1, 2005

ITEM NUMBER: 28

SUBJECT: RESPONSE TO COMMENTS FOR CEASE AND DESIST ORDERS:
**1. CEASE AND DESIST ORDER NO. R3-2005-0008, CITY OF
PACIFIC GROVE ;**
**2. CEASE AND DESIST ORDER NO. R3-2005-0020, CITY OF
MONTEREY;**
**3. CEASE AND DESIST ORDER NO. R3-2005-0021, THE PEBBLE BEACH
COMPANY; AND**
**4. CEASE AND DESIST ORDER NO. R3-2005-0022, CITY OF CARMEL BY
THE SEA, MONTEREY COUNTY**

Regional Board solicited and received comments by January 24, 2005 on the following Cease and Desist Orders: 1. City of Pacific Grove (R3-2005-0008); 2. City of Monterey (R3-2005-0020); 3. The Pebble Beach Company (R3-2005-0021); and 4. City of Carmel by the Sea (R3-2005-0022). Comments were received from: 1) Natural Resources Defense Council (NRDC), 2) The Ocean Conservancy, 3) The City of Monterey, and 4) The Pebble Beach Company (PBCo). The comments are given in *italics*, the response to comments are in regular font.

I. NRDC

Time Schedule

1. While both the Porter-Cologne Water Quality Control Act ("Water Code" Section 13301) and the California Code of Regulations ("CCR" Section 2243) explicitly state that cease and desist orders should result in the earliest possible cessation of the illegal activity, and the immediate installation of corrective measures, the CDOs require the Discharger to do neither." NRDC, pg.2, paragraph 3

2. "The CDOs are illegal because they contain an inexplicably generous, and factually unsupported, time schedule.", NRDC, pg.3, paragraph 2

3. *“What’s worse, the CDOs actually contain a provision by which the Discharges can have...two more years, until January 1, 2010, to stop discharging into the ASBS”, NRDC, pg. 3, paragraph 3*

4. *“...the CDOs provide the Dischargers with such an unreasonably long timeframe in which to cease discharging into the ASBS (if ever), that they essentially serve as discharge permits rather than cease and desist orders”, NRDC, pg. 2, paragraph 3*

5. *“We therefore respectfully recommend that the Regional Board revise the CDOs such that... (2) the Dischargers are not entitled to an additional two-year delay in compliances simply by applying for an exception to the regulations...”, NRDC pg. 2, last paragraph*

The commenter assumes a cease and desist order must require the discharger to cease discharging to ASBS. If the dischargers obtain a State Board exception, they will no longer be in violation of the prohibition or the permit. Therefore, the CDOs require the dischargers to cease violating the *prohibition* by getting an exception, or by eliminating the discharge.

Water Code section 13301 states:

When a regional board finds that a discharge of waste is taking place, or threatening to take place, in violation of requirements or discharge prohibitions prescribed by the regional board or the state board, the board may issue an order to cease and desist and direct that those persons not complying with the requirements or discharge prohibitions (a) comply forthwith, (b) comply in accordance with a time schedule set by the board, or (c) in the event of a threatened violation, take appropriate remedial or preventive action. [Emphasis added.]

California Code of Regulations, Title 23, Section 2243 states:

(a) A time schedule should always be included in a cease and desist order unless there is a lack of information upon which to base a schedule in which case the discharger should be instructed to comply forthwith. "Forthwith" means as soon as is reasonably possible.

(b) Time schedules should be periodically reviewed and updated to assure compliance at the earliest possible date.

The discharger is only required to comply “forthwith” if there is no basis for a time schedule. That is not the case here. The CDOs contain time schedules. The dischargers must apply for a State Board exception to the ASBS prohibition within three weeks of the CDO adoption. The CDO requires them to commence water quality sampling data within 11 months at the minimum (see CDO Requirement No. 7); this time frame is similar to the two-year time frame that the State Board imposed on Scripps Institute when it

adopted a comparable exception. This allows the dischargers to make progress on the exception immediately, rather than waiting until the State Board is able to act on the exception requests. This water quality data will be important to assist the dischargers in determining BMP effectiveness, and designating any additional BMPs that are necessary to protect the ASBS from storm water discharges. This information will also assist Regional Board staff in determining whether any additional interim changes to existing MS4 operations are appropriate or necessary. Major modifications such as moving outfall locations or re-routing dry weather flows to wastewater treatment plants, if not required by the ASBS exception, are not necessary as interim compliance measures.

In addition to the requirement to obtain an exception, the CDOs require the dischargers to increase the BMP implementation schedule (currently in the SWMP), and ensure an improvement in receiving water quality each year. The dischargers must also comply with Attachment 4 of the General Permit within two years, although they do not meet the growth or population criteria for Attachment 4 (i.e., 50,000 population or 25% growth). (CDOs, Requirements 10-11.)

If the State Board denies the exception, the dischargers must eliminate all wet weather discharges within two years of the denial. It does not make sense for the dischargers to waste resources planning for eliminating all discharges unless the exception is denied, particularly since the State Board has expressed willingness to grant exceptions if they are sufficiently protective of ASBS. To

The CDOs have been amended to require that dry weather ASBS discharges cease within two years of the date the CDO is adopted. All wet weather discharges not granted exception must cease no later than two years from the date of exception denial. Given this scenario, a time schedule is required of the discharger that describes what actions must be taken to cease discharge, including infrastructure modifications, and the time necessary to complete those actions. This ensures that the implementation of infrastructure changes occurs as soon as possible (see CDO Requirement No.14).

Immediate Corrective Measures – CCR Section 2245

6. *“We therefore respectfully recommend that the Regional Board revise the CDOs such that (1) the Dischargers are required to comply with the regulations at the earliest possible date through immediate corrective measures...”, NRDC pg. 2, last paragraph*

7. *“CCR Section 2245 states that “[e]ach discharger should be expected to construct emergency facilities or modify existing plant operation to achieve rapid compliance.” (CCR Section 2245(a))*

8. *“...CCR Section 2245(c) provides that “[e]xtra cost of such [emergency] facilities is not a reasonable excuse for failure to construct them.” NRDC, pg. 4, last paragraph*

CCR 2245 applies to emergency situations. Although 23 CCR 2245 does not define "emergency," other relevant definitions require an immediate threat to public health and safety. (See CWC sections 13267(c), 13269(c), 13340; 23 CCR section 647.2(d); 23 CCR section

3870(d), incorporating Public Contract Code section 1102; and CEQA Guideline 15269.) The storm water discharges do not constitute an emergency. The interim corrective measures of implementing more stringent BMPs as necessary and complying with Attachment 4 are adequate. In addition, 23 CCR sections 2244-2244.3, which precede section 2245, apply only to CDOs that impose connection bans to prevent violations or threatened violations by a community sewer system. Unlike the preceding sections, section 2245 does not explicitly limit its application to sanitary sewers. However, the examples of interim measures (chemical treatment, additional disinfection, ponding with or without aeration, receiving water mixing, aeration) are typical interim “fixes” to avoid wastewater treatment plant emergencies. These examples, and the relationship of section 2245 to the preceding sections, suggests that it is not applicable here. Even if applicable, however, for the reasons discussed above, staff believes the CDOs comply. 23 CCR section 2244.1(b), which the commenter cites, applies only for connection bans in CDOs for sanitary sewer facilities. Technical feasibility is an appropriate consideration in establishing a time schedule to comply with a discharge prohibition. (*Petition of California Department of Transportation, Order No. WQ 2001-08.*)¹ The CDO Finding 17 has been revised accordingly.

9. *“compliance is being delayed by claims of economic impact that are conclusory and entirely unsupported by the record.” NRDC, pg 5, paragraph 2*

The compliance schedule and required items have been addressed in Response to Comments No. 1 – 5, and CDO Finding No. 17.

Additional Discharges of Waste (CCR Section 2244(b))

10. *“We therefore respectfully recommend that the Regional Board revise the CDOs such that...(3) specific interim measures are established to address the additional discharges of waste that will result until the Dischargers fully cease and desist all their illegal discharges into these protected areas.”, NRDC pg. 2, last paragraph*

23 CCR section 2244 applies only to discharges to community sewer systems. This section is inapplicable.

Interim Measures and discharges

11. *“The CDOs ...effectively include a Regional Board-issued exemption to the Ocean Plans’ ASBS-discharge prohibition. Specifically, the CDOs allow for an additional two-year delay in compliance...if the Dischargers merely apply to the State Board for an exception to the Ocean Plan.”, NRDC, pg. 6, paragraph 2*

The CDOs do not grant an exception. Staff believes the stringent requirements it imposes will protect water quality more effectively than the enforcement alternative, which is to impose administrative civil liability or seek civil penalties for daily violations. In the

¹ Footnote 4 of the NRDC letter incorrectly states that the State Board in Order No. WQ 2001-08 refused to delay a CDO schedule based on a potential application for an exception. In fact, the State Board delayed the compliance date for one year, specifically due to concerns about technical feasibility of compliance. Caltrans ultimately complied with the prohibition and did not obtain an exception.

event the dischargers do not comply with the CDOs, the Regional Board can impose penalties for violations of the CDOs.

Probability of gaining an exception

12. "...the record in this matter does not remotely suggest that the Dischargers will be able to obtain any variance from the Ocean Plan, once they apply to the State Board.", NRDC, pg. 6, last paragraph.

The fact that State Board has sent the ASBS dischargers letters asking if they intend to apply for an exception suggests that the Dischargers will be able to apply for and possibly obtain an exception from the Ocean Plan Prohibition.

State Anti-Degradation Policy

13. "However, there is no finding or analysis presented in the CDOs or the accompanying Fact Sheet that demonstrates the CDOs will preserve and enhance the ASBS or protect their high quality waters. Under California's anti-degradation policy, the state must make an "anti-degradation finding" if water quality is reduced as a consequence of any action taken by the State Board. (citations omitted)", NRDC, pg. 7, last paragraph

14. "Anti-degradation analysis must be conducted and anti-degradation effects must be considered whenever there is even the potential for an increase in the emission of a pollutant, "even if there is no other indication that the receiving waters are polluted.", NRDC, pg. 8, paragraph 1

Anti-degradation findings are not required in enforcement orders. The purpose of a time schedule is to provide a discharger time to cease violating a prohibition or permit requirement. The anti-degradation findings are in the permit. A CDO does not allow a violation to continue. It is simply one of several enforcement actions the Regional Board can elect to take in order to stop an ongoing or threatened violation.

15. NRDC Page 2 [also page 2 of TOC letter]: July 2003, the first-ever study of ASBS found that they are not being protected at all. The study identified that 36% of the discharges are into the two ASBSs addressed in these CDOs.

The study cited (SCCWRP) was State Board's inventory of discharges of all discharges into all ASBS across California. The study provided the State and Regional Boards with documented information identifying where ASBS-discharges are occurring. The CDOs are Regional Board's first responses to, and are supported by, the SCCWRP. Region 3 is the first region in the state to take enforcement action in response to the ASBS-discharge.

II. The Ocean Conservancy (TOC)

Immediate Solutions

16. The Regional Board should require dischargers to immediately reroute their discharges away from ASBS in most cases, and should only allow dischargers to seek an exception in limited circumstances.

Please see Response to Comments 1 – 5 regarding rerouting discharges.

The Ocean Plan sets forth two criteria for granting an exception to the ASBS discharge prohibition: The exception cannot compromise protection of ocean waters for beneficial uses, and the public interest must be served. Staff notes The Ocean Conservancy's comments regarding when an ASBS exception is proper. The list of exception criteria on page 3 represents The Ocean Conservancy's analysis of the minimum requirements necessary to meet the two criteria, above. These comments may be addressed to the State Board when it considers the exceptions. The Regional Board is not granting an exception.

Timeline for compliance

17. "...it is both illogical and unreasonable to allow a discharger 2-3 years to come into compliance with a regulation that has been in existence for over 20 years. If the dischargers do not choose to seek an exception, they should be expected to comply immediately.", TOC, pg. 5, paragraph 1

The CDOs have been amended to require that dry weather ASBS discharges cease within two years of the date the CDO is adopted. All wet weather discharges not granted exception, must cease no later than two years from the date of exception denial.

A time schedule is required of the discharger that describes what actions must be taken to cease discharge, including infrastructure modifications, and the time necessary to complete those actions. This ensures that the implementation of infrastructure changes occurs as soon as possible.

18. "...additional level of unwarranted delay: if the discharger applies for an exception...and the State Board does not grant the exception by January 1, 2008, the discharger is given until January 1, 2010 to cease discharging...This delay is unreasonable.", TOC, Pg. 5, paragraph 2

The CDO has been modified. In this scenario, the Discharger is given two years from the date of exception denial. Regional Board staff consider this time frame to be reasonable; to cease discharging (or reroute discharge) the Discharger will likely have to: 1. draw up plans and consider multiple options of infiltration, rerouting, and/or source removal for

entire sections of the municipality; 2. gain necessary approval, permits, and funding; 3. locate and purchase lands for infiltration, treatment or infrastructure rerouting; 3. implement plans. Two years appears to be the minimal time needed to undertake such tasks.

19. "If they do not choose to apply for an exception, or if their application for an exception is rejected, the dischargers should be required to comply immediately.", TOC, pg. 5, paragraph 6

See Response to Comment above.

Non-storm water discharges

20. "The Board should revise the CDOs to provide for elimination of all non-stormwater non-firefighting urban runoff discharges. No exceptions.", TOC, pg 6, paragraph (a)

The CDOs do not permit discharges to the ASBS. They provide a time schedule to comply with the Ocean Plan by obtaining an exception or ceasing discharges. As a condition of the CDO, the dischargers must eliminate all non-stormwater discharges except those that staff does not expect to add pollutants to the ASBS. This is consistent with the storm water regulations, which allow exceptions for certain low-threat non-storm water discharges unless those discharges are significant contributors of pollutants. The time schedule also requires that the dischargers must affirmatively demonstrate that these discharges are not significant contributors of pollutants. If they are, the Executive Officer can require appropriate amendments to the SWMP.

Natural water quality conditions

21. " The CDOs should be revised to contain the same overarching requirement ("natural water quality conditions, seaward of the surf zone, must not be altered as a result of the discharge) protecting natural water quality.", TOC, pg. 6, paragraph (b)

The amended CDOs do not contain specific monitoring and reporting requirements. They contain requirements to develop a Monitoring and Reporting Program (MRP) and criteria for what is expected to be in the MRP. It should be noted that the "natural water quality conditions..." quote is a requirement of the Scripps Exception. The CDO does not grant an exception to the ASBS-discharge prohibition. If the municipality chooses to apply for an exception, and it is granted, the requirements for the exception will be prescribed by State Board.

Monitoring Tables and Data

22. The values in Table A are inappropriate for (water quality standards in high water quality areas like ASBSs). From TOC, pg. 6, paragraphs (c)

23. *“Table C represents Natural Background Seawater Conditions; this is a far more appropriate standard for comparison (than) effluent limits applied to treatment works.”, TOC, pg. 6 last paragraph*

24. *“Alternately, the Scripps exception provides for the formation of an advisory committee to determine what constituent levels represent natural water quality for the relevant ASBSs. A similar procedure could be employed for these ASBSs.”, TOC, pg. 6, last paragraph*

Regional Board staff agree with Comment No. 24. With the abundance of past and ongoing studies, research facilities and staff, and knowledgeable and interested parties, it will be far better for water quality and all interests to combine these resources and create a monitoring and reporting plan (MRP) that is tailored to the Monterey region. Without diminishing the relative value of Tables A and C, there may be better existing data for use in the MRP. For these reasons, the amended CDOs give requirements of minimum MRP components, but require the municipalities to convene a panel of experts who will assist in preparing a detailed MRP. The discharger is required to specify in the MRP where and which types of sampling will occur to adequately measure BMP effectiveness and accumulate background data. Utilizing the advice of a panel of experts, the municipalities will recommend in their MRP a method to determine ASBS-background water quality; if sampling reveals that ASBS-background water quality is being impacted by the discharge, then the Discharger is directed to apply an iterative process of determining the source, and eliminating pollutants (see CDO Requirement No. 10, also Response No. 26 – 27). This approach allows municipalities and the Regional Board benefit from the wealth of local research institutions and scientific knowledge of the Monterey regional marine environment. The municipalities must submit the MRP to the Executive Officer for approval.

25. *“The consequences of deviating from natural water quality conditions should be made clear”, TOC, pg. 7, paragraph 1*

Please see response to comment above. As an additional response, should the conditions of this CDO be violated, the Regional Board has multiple enforcement options provided by the California Water Code. Regional Board staff and management must choose which type of enforcement fits the situation.

Monitoring

26. *“Providing background data is but one of the purposes of a monitoring and reporting plan. Other... purposes are to confirm that the discharger is complying with the terms of the exception, and to confirm that natural water quality in the ASBS is being protected by the measures in the exception.”, TOC, pg. 7, paragraph 3*

27. *“The dischargers should not be permitted to substitute pre-existing data for data to be collected pursuant to the monitoring and reporting plan.”, TOC, pg. 7, paragraph 3*

CDO Finding No. 20 has been revised to state, “The purposes of the monitoring and reporting plan requirements are two-fold. First, to determine natural water quality and benthic marine life conditions, and second, to measure the effectiveness of BMPs.

The discharger is required to specify in the MRP where and which types of sampling will occur to adequately measure BMP effectiveness and accumulate background data. Because the Monterey Bay and nearby regions have been the focus of many studies and on-going research, it does not seem wise to preclude using any pre-existing data. The municipalities may have scientifically justifiable reasons for utilizing existing data in some manner in the MRP. Additionally, the Scripps Exception relies on “natural water quality” standard (Scripps Finding 3.a). It may well be the case that there is valid, existing data that will help determine what “natural water quality” is in the ASBS areas . The Executive Officer will determine if the MRP meets the objectives of the CDO.

III. Pebble Beach Company

Waste and Ocean Plan

28. “To our knowledge, there is no evidence that any of the run-off from the Del Monte Forest has caused any degradation in the water quality of the Carmel Bay ASBS...Nor do we believe that PBCo is discharging any “wastes” ”, PBCo, pg 1, paragraph 2

29. “PBCo also believe, similarly to LA County and CalTrans, that the Ocean Plan should not be applied to Stormwater discharges in the absence of a statewide policy, and the State Water Resources Control Board (the “State Board”) is obligated, pursuant to Water Code Sections 13241 and 13242, to conduct an analysis of the impacts of the application of the Ocean Plan to stormwater discharges.”, PBCo, pg. 1 at bottom, continuing to pg. 2

The State Board resolved this issue in Order No. WQ 2001-08. The Regional Board is not require to analyze the factors listed in Sections 13241-13242 in issuing a cease and desist order.

In addition, the statute of limitations to challenge the 1978 Ocean Plan amendment ran long ago. Any challenge to these provisions would have had to be made by 1981. (Code of Civil Procedure, section 338 provides that three years is the period of commencement for "(a) [a]n action upon a liability created by statute, other than a penalty or forfeiture. ...") The CEQA statute expired even earlier (Public Resources Code section 21080.5(g).)

30. “A second legal issue is whether the State Board ever followed the requisite administrative procedures before changing its policy such that the prohibition is now applied to stormwater.”, PBCo, pg. 2, paragraph 1

All amendments to the Ocean Plan underwent the appropriate administrative process. The State Board's conclusion that the ASBS prohibition applies to stormwater is precedential, and the Regional Board is not free to ignore it.

31. "Another legal concern is that no CEQA analysis has been done of the determination that the Ocean Plan rules should be applied to Stormwater or dry season water discharges.", PBCo, pg. 2, paragraph 1

Any amendments to the Ocean Plan are subject to the CEQA process in the State Board's regulations, 23 CCR §3775 et seq. (see Public Resources Code §21080.5). The State Board complied with this process when it adopted Ocean Plan amendments. NPDES permits and CDOs are exempt from CEQA (Water Code section 13389 and CEQA Guidelines 15321, respectively).

32. "...PBCo adopts and incorporates the objections and concerns of Caltrans in this letter.", PBCo, pg. 2, paragraph 1

The commenter failed to provide a copy of this document and Regional Board staff is unable to respond. However, any objections to the ASBS prohibition must be addressed to the State Board. The Regional Board cannot disregard prohibitions in statewide plans.

33. "...potential takings implications given that a possible reading of the CDO is to strip PBCo of long-held drainage rights that pre-dated the ASBS designations in the 1970's.", PBCo, pg. 2, paragraph 2

The commenter does not explain what drainage rights are implicated or how the CDOs would effect a taking. However, a discharger does not acquired a vested right to discharge waste in violation of state or federal law, regardless of when the discharge commenced. (See, e.g., California Water Code section 13263(g).)

Financial impacts

34. "The biological studies and effluent monitoring required alone would have significant financial impacts on PBCo. The cost of such testing must bear a reasonable relationship to the benefits to be derived from such testing, as required by California Water Code Section 13267", PBCo, pg. 3, paragraph 1

The testing is also required by Water Code section 13383, which includes no such cost-benefit requirement. Even under Section 13267, however, the monitoring being required is necessary for Regional and State board staff to determine the status of beneficial uses in the ASBS discharge area, and the impact of the storm water discharge into the ASBS. Furthermore, these requirements parallel those required by the Scripps Exception recently granted by the State Board.

Monitoring purposes

35. “...the presence of pollutants in sampled effluent will not determine the responsible party to the possibly degraded receiving water quality due to dilution, historical climate based changes, and other potential factors ... In sum, there are many reasons to question whether the data being requested will be helpful in determining whether the receiving waters are more polluted than they were 5, 10, or even 20 years ago, and, even if that could be established, which entities, if any, are responsible (or whether natural causes are the reason).” PBCo, pg. 3, paragraph 2

See also Response to Comments No. 22 – 27.

36. “...we would respectfully request that the February 11, 2005, hearing be continued to a future date...”, PBCo, Pg. 3, last paragraph

There was a 30-day comment period prior to the hearing and an additional 17 days after the comment period closed to prepare for the hearing. There has also been at least two informal meetings with the State Board staff (one in Monterey and one in San Diego). Regional Board staff will not recommend any further delays. The Pebble Beach Company may can request at the hearing that the board not take any action, but should be prepared to present all oral testimony at the hearing (separate deadlines apply for written submissions) and for the Board to take action.

IV. City of Monterey

37. “...we don’t believe that the City of Monterey should be subjected to a CDO based upon indirect discharge.” The City of Monterey supports this statement with examples that the City of San Diego, the California Department of Transportation, the U.S. Army (as owner of the Presidio), and Pacific Grove Unified School District have not been named in a similar CDO. – City of Monterey, pg. 1, paragraphs 1 and 2

The Phase II permit and the Ocean Plan prohibit ASBS discharges absent an exemption. The RB has no authority to change the prohibition. These comments should be addressed to the SWRCB during the exception process. As the City of Monterey notes, it is subject to the ASBS prohibition. Its discharge through the Pacific Grove outfall violates that prohibition. Monterey has not suggested any changes to clarify that it is only required to comply with the CDO with respect to its own discharges.

Please see also Response to Comment No. 39

38. CDOs should be issued to Caltrans, the Pacific Grove Unified School District and the US Army.

Regional Board staff and management must prioritize work items. Because the Cities of Monterey, Pacific Grove, Carmel-by-the-Sea, and the Pebble Beach Company are

precluded from obtaining Phase II permit coverage until the ASBS-discharge issue is resolved, Regional Board staff determined that issuing this round of CDOs was a priority.

39. The City of Monterey is concerned that they have no police powers over Pacific Grove if that city does not comply with their CDO. – City of Monterey, pg. 1 at bottom, continuing to page 2

Regional Board staff recommend adding the following Finding to the City of Monterey CDO:

“The Regional Board recognizes that the City of Monterey has no ability to take enforcement action against the City of Pacific Grove should the City of Pacific Grove violate their CDO. The City of Monterey will only be responsible for storm water and non-storm water runoff that originates from lands within its jurisdiction, and subsequently enters into the Pacific Grove storm drainage system.

In the event that Pacific Grove does not comply in whole or in part with their CDO, the City of Monterey will not be required to enter into the Pacific Grove’s storm drain system; to monitor water quality within the City of Pacific Grove; or to comply with conditions within this CDO that can not be met without the compliance and cooperation of both Pacific Grove and the City of Monterey.”

With respect to the Regional Board’s ability to enforce, the Basin plan and Ocean Plan prohibitions are self-implementing. The Regional Board can take enforcement action under CWC 13301, 13350 or 13383 for violating the prohibitions, even if the cities do not obtain permit coverage. In addition, unpermitted surface water discharges violate the Clean Water Act and give rise to potential enforcement actions, including imposition of ACLs under P-C and CWA enforcement actions.

40. “It also doesn’t make sense that both Pacific Grove and Monterey are being required to submit the same documents and reports.”, pg 2, paragraph 1

The CDO states that the Dischargers are encouraged to work together, including submitting required documents and reports.

41. The City discusses a particular outfall that discharges near ASBS No. 19, and comments that there is no mention of this discharge in the draft CDO. – pg. 2, paragraph 2

The CDO is issued for direct discharges to the ASBS, and follows the State Board’s lead of attending to direct ASBS-discharges. The nearby discharge point is not mentioned for this reason.

Staff agrees that discharges to land that are located a sufficient distance from the ASBS so as not to affect receiving water quality are not subject to the prohibition. This also applies to discharges to surface water, where sufficient dilution occurs prior to discharge into the ASBS to eliminate any receiving water impacts to the ASBS.

42. Page 2, paragraph 3 notes incorrect reference to Carmel Bay ASBS.

This item has been corrected and noted on an Errata Sheet sent to the Interested Parties, and included with this Staff Report.

43. Comment regarding CDO Pg. 7, Condition 9 – “Has the RWQCB staff coordinated with (research groups) to see if studies have been done...?”

Regional Board staff have not undertaken a study of current research resources. The CDO encourages the Dischargers to utilize relevant studies if justifiable in the MRP.

44. Comment regarding CDO pg. 7, Condition 9 and 10 – City suggests setting “reasonable effluent standards.”, and states, “Currently, nobody can tell us if there are ocean water quality problems that need to be solved.”

The Ocean Plan, Basin Plan and General Permit prohibit any discharges of waste into an ASBS. The prohibition is not limited to discharges that would harm the marine environment; such harm is presumed. If necessary, the Regional Board could establish stormwater effluent limits in an individual NPDES permit, or the State Board could do so in an exception. The City of Monterey is free to add effluent sampling to its monitoring and reporting program. Please also see Response to Comment No. 37.

45. Comment regarding CDO pg. 7, Condition 11 – “If the limits in Tables A and C are designed to protect the receiving water, it would appear that Conditions 9 and 10 would be unduly burdening us with redundancies.”

Please also see Response to Comments 22 - 24

V. Changes have made to the draft CDOs

A summary of the changes from the Draft CDO are as follows:

- Monitoring and Reporting Program (MRP)

The CDO has been modified to allow for more flexibility and inclusiveness. The amended CDOs contain requirements to develop a Monitoring and Reporting Program (MRP); the CDO lists what elements must be included in the MRP. The municipalities are required to convene a panel of experts who will assist in preparing the MRP. The discharger is required to specify in the MRP where and which types of sampling will occur to adequately measure BMP effectiveness and accumulate background data. Utilizing the advice of a panel of experts, the municipalities will recommend in their MRP a method to determine ASBS-background water quality; if sampling reveals that ASBS-background water quality is being impacted by the discharge, then the Discharger is directed to

apply an interactive process of determining the source, and eliminating pollutants. This approach allows municipalities and the Regional Board benefit from the wealth of local research institutions and scientific knowledge of the Monterey regional marine environment. The municipalities must submit the MRP to the Executive Officer for approval.

- **CDO Time Schedule**

The CDO time schedule has been amended in the following ways and for the following reasons:

- a) The Discharger must advise the Regional Board in writing whether it intends to seek an exception or cease all storm water discharges to the ASBS. Since the Discharger must apply to the State Board for an exception by March 1, 2005, the Discharger must also notify the Regional Board on March 1, 2005 rather than 30 days from the date of the adoption of the CDO. This shortens this timeline by 11 days.
- b) The Discharger must cease all non-storm water discharges to the ASBS within two years of CDO adoption rather than three years. This shortens this timeline by one year.
- c) The Discharger must submit a Monitoring and Reporting Program (MRP) for the Executive Officer's approval within nine months of CDO adoption, rather than six months. This timeline is lengthened by three months to allow the Discharger time to develop a MRP that meets the requirements of this CDO.
- d) The monitoring time schedules have been shortened. Sampling must begin within two months of the date of MRP approval rather than two years from CDO adoption, fifteen months sooner than required by the Draft CDO.
- e) The benthic marine life survey must be completed within eighteen months of the date of MRP approval rather than three years from CDO adoption, nine months sooner than the Draft CDO.
- f) The bioaccumulation study must be completed within two years of the date of MRP approval rather than three years from CDO adoption, three months sooner than the Draft CDO.

- **Cease Discharge Timeline**

A time schedule requirement has been added to the CDO so that if the State Board denies and exception, or if the Discharger chooses to cease discharge rather than seek an exception, the Discharger must provide a time schedule for the activities necessary to cease discharge for the Executive Officer's approval. This ensures that the activities occur in a timely manner.

