

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

STAFF REPORT FOR REGULAR MEETING OF MAY 12-13, 2010

Prepared April 12, 2010

ITEM NUMBER: 16

SUBJECT: **Monterey Regional Stormwater Permit Participants Group's Compliance with Phase II Small Municipal Separate Storm Sewer System General Permit – Status Update**

THIS ACTION: **Status Update – Information item only**

SUMMARY

This update provides a status report on the Monterey Regional Stormwater Permit Participants Group's (Monterey Regional) compliance with the Phase II Small Municipal Separate Storm Sewer System General Permit (General Permit). Water Board staff issued a Notice of Violation to Monterey Regional in September 2009 (September 2009 NOV) for failure to effectively implement and/or adequately report on the implementation of portions of the Monterey Regional Storm Water Management Program. Water Board staff reviewed Monterey Regional's responses to this September 2009 NOV and found them to be inadequate. While staff has found that Monterey Regional has come into compliance with some of the violations noted in the September 2009 NOV, including the County of Monterey's previous failure to adopt a stormwater ordinance, other violations remain unaddressed. As a result, Water Board staff is preparing a second NOV for Monterey Regional's failure to fully address the violations noted in the September 2009 NOV and comply with other permit requirements (Second NOV). This Second NOV will be included as a supplemental sheet to this staff report. In addition to the two NOVs discussed above, which stem from Water Board staff's focused audit and comprehensive review of Monterey Regional's annual report, Water Board staff also issued a Notice of Violation to the City of Monterey on April 13, 2010 for failure to implement an effective construction site stormwater runoff control program. This NOV resulted from Water Board staff's joint audit with USEPA of the City of Monterey's entire stormwater management program (Attachment 1).

DISCUSSION

The Monterey Regional participating entities are the cities of Monterey, Marina, Seaside, Del Rey Oaks, Pacific Grove, Sand City, Carmel-by-the-Sea and the County of Monterey. Water Board staff has been reviewing the Monterey Regional Stormwater Management Program (MRSWMP) in detail over the past 18 months to determine compliance with the General Permit. This effort has included Water Board focused audits of all eight participating entities' programs, a joint audit with USEPA of the City of

Monterey's program, annual report review, and several meetings and conference calls with the participating entities.

Monterey Regional September 2009 NOV

Based on its focused audits of all eight participating entities' programs, annual report review, as well as meetings and conference calls with the participating entities, Water Board staff issued a NOV to Monterey Regional in September 2009. The September 2009 NOV contained 117 comments that noted violations, needed improvements, and program recommendations. The September 2009 NOV required Monterey Regional to take further action on the "needed improvements" by either improving the MRSWMP to meet the Maximum Extent Practicable (MEP) standard or improving the Annual Report to facilitate Water Board compliance determination. The September 2009 NOV identified several categories of violations for Monterey Regional.

Water Board staff received several documents from Monterey Regional during November and December of 2009, as well as during January and February of 2010, in response to the requirements contained in the September 2009 NOV. In addition, Water Board staff received comments from Monterey Coastkeeper on November 19, 2009 on the effectiveness of the MRSWMP. Water Board staff also received comments from Monterey Coastkeeper on January 19, 2010, on Monterey Regional's proposed revisions to the MRSWMP in response to the September 2009 NOV. Water Board staff evaluated all of the submitted documents and comments to determine the current status of Monterey Regional's compliance with permit requirements and requirements contained in the September 2009 NOV. As a result of this evaluation, Water Board staff is preparing a Second NOV for various violations. This Second NOV will be included as a supplemental sheet to this staff report. Water Board staff will meet with Monterey Regional in May 2010 to provide any needed clarification of the required response to the Second NOV. Staff will evaluate potential additional enforcement actions if Monterey Regional does not comply with violations in response to the Second NOV.

Monterey Regional's compliance with violations identified in the September 2009 NOV: Monterey Regional has demonstrated they are no longer out of compliance with some of the violations identified in the September 2009 NOV. However, some violations identified in the September 2009 NOV are still not addressed adequately. The Second NOV identifies each previously identified violation where Monterey Regional continues to fail to demonstrate compliance.

Monterey Regional's compliance with revising the MRSWMP as required in the September 2009 NOV:

Monterey Regional submitted a proposed revised MRSWMP document containing most of the revisions required in the September 2009 NOV. The Second NOV identifies each required MRSWMP revision that has not been adequately addressed by Monterey Regional. Some of the submitted MRSWMP language has been approved by the Executive Officer and some of the language requires modification before the Executive Officer can approve the MRSWMP revision.

Monterey Regional's compliance with providing an addendum to the Year 2 Annual Report that contains all of the information required by the September 2009 NOV:

Monterey Regional provided an addendum to the Year 2 Annual Report that contains

some of the information required by the September 2009 NOV. The Second NOV identifies the required information that has not been submitted by Monterey Regional.

Monterey Regional's report on the implementation of all the improvements required by the September 2009 NOV:

Monterey Regional has demonstrated they have implemented some of the improvements required by the September 2009 NOV. The Second NOV identifies each required improvement for which Monterey Regional has failed to demonstrate implementation.

Monterey Regional's compliance with providing the missing information requested in the Year 1 Annual Report comment letter:

The Year 1 Annual Report comment letter listed required items of additional information. The September 2009 NOV identified as violations the remaining information items not provided to Water Board staff. Monterey Regional has provided all of the missing information requested in the Year 1 Annual Report comment letter except for one item from Del Rey Oaks. The Second NOV identifies Del Rey Oaks's continued violation of not providing a response for the outstanding item with the required information.

County of Monterey Stormwater Ordinance

The County of Monterey was required by the MRSWMP to implement a stormwater ordinance within six months of General Permit coverage, or March 2007. The County of Monterey adopted a stormwater ordinance on March 16, 2010, three years late. Staff is not recommending further enforcement for this violation at this time since the County has complied with the requirement to adopt the ordinance, albeit years late. Staff will continue to evaluate the County of Monterey's compliance with all elements of the MRSWMP. Should the County incur future violations, enforcement options may be evaluated along with the extended delay to adopt the ordinance.

City of Monterey Joint Water Board Staff and USEPA Audit

During the week of September 21, 2009, Water Board staff, a USEPA contractor, and staff from USEPA conducted an audit of the City of Monterey Storm Water Management Program to evaluate compliance with the General Permit. USEPA decided to audit a participating entity of the MRSWMP for compliance with the General Permit and asked Water Board staff to select one Monterey Regional participating entity for an audit. Water Board staff selected the City of Monterey based on the City's relatively large population, the stormwater work the City conducts on behalf of other local municipalities, and the results of Water Board staff's review and focused audit of the MRSWMP earlier in 2009.

On February 11, 2010, the City of Monterey and Water Board staff received an audit report from USEPA containing deficiencies and recommendations for program improvement. The most significant program deficiency USEPA identified was the City of Monterey's failure to develop, implement, and enforce an effective construction site stormwater runoff control program. This finding was emphasized due to the scope of the construction program deficiencies, and as a result of the City's role in providing site plan review and/or construction site inspection services to the communities of Sand City, Del

Rey Oaks, and Pacific Grove. Water Board staff issued a Notice of Violation on April 13, 2010 to the City of Monterey (Attachment 1).

The Notice of Violation requires the City of Monterey to take corrective action immediately to address the violations and to maintain detailed records of actions implemented to correct each violation, as well as the City's actions in response to each audit report recommendation. Water Board staff will meet with the City of Monterey in May 2010 to provide any needed clarification of the required response to the April 13 Notice of Violation. Water Board staff will re-audit the City of Monterey's stormwater management program throughout 2010 and review the City's corrective actions for compliance with the General Permit. Staff will select most effective times to re-audit the City's actions.

ATTACHMENT

Notice of Violation, City of Monterey Storm Water Discharges from Small Municipal Separate Storm Sewer Systems (MS4s), WDID NO. 3 27MS03006

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