

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

**STAFF REPORT FOR REGULAR MEETING OF MARCH 14-15, 2013
Prepared February 19, 2013**

ITEM NUMBER: 9

SUBJECT: Stormwater Post-Construction Requirements Status Report

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KEY INFORMATION:
Location: Region-wide
Discharge Type: Municipal Storm Water
Existing Orders: Water Quality Order No. 2003-0005-DWQ, Resolution No.
R3-2012-0025

THIS ACTION: Informational

SUMMARY

The new Phase II municipal stormwater permit requires the Central Coast Water Board to readopt its Post-Construction Requirements in order for them to be implemented under the permit. Central Coast Water Board staff plans to bring the Post-Construction Requirements to the Central Coast Water Board for readoption in July 2013. At that time, staff also plans to modify the "1.963 multiplier" that is included in the Post-Construction Requirements. This multiplier is used to determine the amount of stormwater runoff a development project must retain on site. Modification of the multiplier will reduce the amount of runoff the Post-Construction Requirements require to be retained. Following readoption in July 2013, staff plans to assess other issues related to implementation of the Post-Construction Requirements, to determine if further modifications should be pursued. Throughout these efforts, staff plans to continue assisting municipalities with implementation, while also conducting an extensive stakeholder involvement process.

BACKGROUND

The Central Coast Water Board adopted its Post-Construction Requirements for new development and redevelopment on September 6, 2012. During adoption, the Central Coast Water Board made findings that Central Coast municipalities must implement the Post-Construction Requirements to comply with the existing statewide Phase II municipal stormwater permit, Order No. 2003-0005-DWQ (Phase II permit). However, at the time of adoption of the Post-Construction Requirements by the Central Coast Water Board, State Water Resources Control Board staff was also engaged in the long term process to reissue the Phase II permit. During this reissuance process, the manner in which the Post-Construction Requirements were addressed by the new draft Phase II permit changed several times. Ultimately, the Phase II

permit was reissued on February 5, 2013, allowing implementation of the Post-Construction Requirements on the Central Coast.

The newly adopted Phase II permit supports the Post-Construction Requirements, requiring municipalities to comply with Regional Water Board developed watershed process-based post-construction requirements, such as those developed and adopted by the Central Coast Water Board. However, for procedural reasons having to do with the language of the Central Coast Water Board's resolution that enacted the Post-Construction Requirements, the new Phase II permit necessitates that the Central Coast Water Board Post-Construction Requirements must be readopted by the Central Coast Water Board to allow for their implementation under the permit.

The process used by State Water Board staff to address the Post-Construction Requirements in the new Phase II permit, combined with ongoing stakeholder concerns regarding implementation of the Post-Construction Requirements, generated a new round of stakeholder comments on the Post-Construction Requirements. These comments were raised before both the Central Coast Water Board and the State Water Board between December 2012 and February 2013. The comments focused on procedural issues, such as how the Post-Construction Requirements and the new Phase II permit interact, as well as technical issues, such as the "1.963 multiplier" used to determine the amount of runoff a development project must retain on site.

RECENT STAFF EFFORTS TO IMPLEMENT THE POST-CONSTRUCTION REQUIREMENTS

Central Coast Water Board staff has been working diligently to preserve the Central Coast Water Board's ability to implement and manage its Post-Construction Requirements, while also addressing technical concerns stakeholders have raised regarding the requirements. Central Coast Water Board staff has made substantial progress on both fronts. As mentioned above, following extensive Central Coast Water Board staff participation in its adoption, the new Phase II permit allows the Central Coast Water Board to readopt its Post-Construction Requirements and continue with implementation of the requirements. To address technical issues raised by stakeholders, Central Coast Water Board staff has reconvened the Joint Effort Review Team (JERT) as a forum to discuss and potentially address those concerns. Specifically, the JERT formed a subcommittee to address the "1.963 multiplier" issue. This subcommittee has made significant progress, and has developed a draft proposal for addressing the issue, which will soon be reviewed by the JERT as a whole. Central Coast Water Board staff anticipates completing resolution of the multiplier issue with stakeholders in the near future, which will reduce the amount of runoff development projects are required to retain on site.

Staff has also continued to work with municipalities in readying to implement the Post-Construction Requirements. For example, staff is well underway in its efforts to meet with all municipalities to discuss their progress in preparing for Post-Construction Requirements implementation. At these meetings, municipalities and staff are identifying the steps necessary for successful implementation, steps already taken by municipalities, and additional steps remaining. A focus of these meetings has been identification of the enforceable mechanisms municipalities plan to use to require implementation of the Post-Construction Requirements. In order to streamline the amount of effort municipalities must undertake to complete this task, staff has clarified that municipalities can incorporate the Post-Construction Requirements by reference into their ordinances, rather than inserting the requirements into ordinances verbatim or using other more time- and resource-intensive means for making the requirements enforceable. In addition, staff is coordinating with the California Coastal Commission and

municipalities to ease the ordinance update process for municipalities in the coastal zone.

In addition to these efforts, staff continues to work on the development of materials and tools that will assist municipalities with Post-Construction Requirements implementation. Staff is drafting a template Stormwater Control Plan for municipalities, which will help ensure municipalities are requesting and receiving the information from project proponents that will sufficiently demonstrate compliance with the Post-Construction Requirements. Development of a municipal user's guide by staff is also in process. This user's guide will provide municipalities with assistance on how to implement various tasks necessary to enact the Post-Construction Requirements.

Finally, staff has written a letter to all applicable municipalities updating them on the status of the Post-Construction Requirements (see Attachment 1). The letter informs municipalities that the Central Coast Water Board is moving forward with implementation of the Post-Construction Requirements, and provides staff's assessment of how the requirements interact with the new Phase II permit. The letter further states staff's anticipated plan for implementing the Post-Construction Requirements, including explanation of the process and schedule staff plans to follow. The letter also reminds municipalities of steps they should be taking to prepare for implementation, including coordination with the California Coastal Commission if necessary.

STAFF PLAN FOR POST-CONSTRUCTION REQUIREMENT IMPLEMENTATION

Staff plans to continue moving forward towards full implementation of the Post-Construction Requirements. The State Water Board encourages this, stating in the Fact Sheet to the new Phase II permit: "After receiving extensive public comment on Attachment J, the State Water Board determined that, while the Board continues to support a watershed process-based approach to hydromodification requirements, the Joint Effort process should be allowed to evolve and proceed, without incorporation into this Order, to address several unresolved issues acknowledged by the parties to that process, including the Regional Water Board."

However, while the State Water Board supports the Post-Construction Requirements, it also takes the position that the requirements need to be readopted by the Central Coast Water Board, stating in the new Phase II permit Fact Sheet: "[...] the Central Coast Region Small MS4s will be required to implement watershed process-based requirements developed through the Joint Effort only after those requirements have been reconsidered and approved by the Central Coast Water Board." The Fact Sheet goes on to explain that the State Water Board finds readoption to be necessary because Central Coast Water Board Resolution No. R3-2012-0005 enacts the Post-Construction Requirements by way of Storm Water Management Programs, which no longer exist under the new Phase II permit.

Since the State Water Board finds readoption of the Post-Construction Requirements to be necessary, staff will undertake readoption of the requirements. In response to the State Water Board's finding that the Post-Construction Requirements are voided as a whole, staff plans to conduct a process to readopt the Post-Construction Requirements in their entirety, rather than limit the process to just new portions that have been modified.

While readopting the Post-Construction Requirements, staff also plans to use the opportunity to address the "1.963 multiplier" issue. There is general agreement between Central Coast Water Board staff and stakeholders that the multiplier can be improved, and substantial progress has already been made on the issue by the JERT subcommittee, as mentioned above. Through these efforts, staff expects a resolution of this issue will be forthcoming soon. As such, any

necessary modifications to the Post-Construction Requirements to address the multiplier issue should be ready well in advance of the Post-Construction Requirements readoption.

Staff has identified the two actions discussed above (readoption of the Post-Construction Requirements and resolution of the "1.963" multiplier) as short term actions. Staff plans to conclude these short term actions and bring an action item to the Central Coast Water Board in July 2013. Addressing these two action items is relatively straightforward, since modifying the resolution is largely procedural, and addressing the "1.963 multiplier" is well underway. In addition, there is general agreement between Central Coast Water Board staff and stakeholders that the actions are necessary. As such, they are appropriate as short term efforts to be included in a July 2013 action item.

On the other hand, addressing other potential issues, which can be complex and have not yet benefited from efforts to address them up to this point, has a much more open ended timeframe. Staff considers addressing these less defined potential issues to be a long term effort. Tracking such issues is consistent with staff's normal commitment to provide compliance assistance and good program oversight. As such, following completion of the short term actions described above, staff plans to begin the process for assessing potential longer term actions. This process will initially involve discussions with stakeholders to identify the difficulties they are having with implementation of the Post-Construction Requirements. Based on those discussions, staff will identify which of these issues to pursue further to determine if they can be resolved. Staff will identify issues to engage in based primarily on whether the issue can be addressed while still protecting watershed processes and beneficial uses. Staff will also consider factors such as the implications of potential modifications for municipalities and developers, the level of agreement that exists regarding the need for the issue to be addressed, and the time and resources necessary to address the issue.

At present, several issues have already been identified by stakeholders that they would like to see investigated and potentially modified. Staff will assess these issues, and likely others, to determine if they are appropriate for further investigation and potential resolution. These issues include: (1) refinement of the 95th percentile storm event retention criteria using local rainfall and other data; (2) refinement of how technical infeasibility for retention of runoff is determined; and (3) incorporation of protection of additional watershed processes that are currently beyond the scope of the Post-Construction Requirements.

As staff has done throughout Post-Construction Requirements development and implementation, staff will continue to assist municipalities with implementation and conduct a comprehensive process for participation from all stakeholders. During the process to address short term issues, staff plans to continue assisting municipalities prepare for implementation of the Post-Construction Requirements. These efforts were discussed above in the Recent Staff Efforts to Implement the Post-Construction Requirements section of this Staff Report, and include meeting with municipalities to assess their progress in preparing for implementation, developing guidance documents, coordinating with the California Coastal Commission, and communicating to municipalities future implementation steps that will need to be taken. In addition, stakeholders will be provided ample opportunity to participate with Central Coast Water Board staff as short and long term actions develop, through such means as the JERT subcommittee. Also, over the long term, the stakeholder involvement process will include regular reporting to both the State Water Board and the Central Coast Water Board. The recently adopted new Phase II permit calls for joint annual reporting to the State Water Board by Central Coast Water Board and State Water Board staff. Staff also plans to update the Central Coast Water Board on Post-Construction Requirements implementation at least annually.

These updates to both Water Boards will include information on staff efforts to resolve issues, municipal implementation progress, and effectiveness of the Post-Construction Requirements. The updates will also provide stakeholders with the opportunity to provide input to the Water Boards.

SCHEDULE

Staff plans to complete the short term actions identified above (readopt the Post-Construction Requirements and address the multiplier issue) and bring them to the Central Coast Water Board for adoption in July 2013. A July 2013 action item will allow Post-Construction Requirement implementation to remain on schedule and commence on September 2013. Staff finds that staying on schedule is appropriate. The types of modifications staff plans for July 2013 are familiar to stakeholders and are relatively minor. For example, readopting the Post-Construction Requirements so they are implementable under the new Phase II permit is simply a procedural task. Likewise, addressing the "1.963" multiplier is underway and should only require modification to one portion of one attachment of the Post-Construction Requirements. The appropriateness of remaining on schedule is further demonstrated by the fact that the Post-Construction Requirements have been in the process of development and implementation for years, with substantial time extensions already provided to municipalities. Furthermore, staff continues to conduct various activities to assist municipalities in getting ready to implement the Post-Construction Requirements in September 2013, such as holding meetings to discuss adequacy of ordinances or other enforceable mechanisms, developing tools and guidance documents, and coordinating with the California Coastal Commission.

Staff finds delay of implementation until after September 2013, in order to address additional issues identified by stakeholders, to be unwarranted. These issues are not well-defined, are complex, and have not yet benefitted from substantial efforts to resolve them. It is unclear at this time how to address these issues, or even if addressing the issues is appropriate. As such, delays to address these issues could be substantial and likely would negatively impact watershed processes and beneficial uses. Instead of trying to address every potential issue prior to beginning implementation, staff plans to maintain the current implementation schedule and adjust in response to results after implementation starts. The Central Coast Water Board set up a process for staff to assess implementation of the Post-Construction Requirements, and staff plans to use this process to adaptively manage the requirements consistent with staff's responsibilities for program oversight.

Following the July 2013 Central Coast Water Board meeting to address short term actions, staff plans to initiate a process to assess potential long term actions. Staff will involve the JERT while identifying, assessing, and prioritizing potential issues to address. This effort will involve regularly scheduled JERT meetings, meetings with other stakeholders, and updates to the Central Coast Water Board and State Water Board.

Tentative Schedule

- March – April 2013 – JERT and JERT subcommittee meetings as necessary
- Mid-April 2013 – Short term modifications to Post-Construction Requirements available for comment
- July 2013 – Central Coast Water Board action item to readopt Post-Construction Requirements with short term modifications
- September 6, 2013 – Municipalities begin implementation of Post-Construction

Requirements

- October – November 2013 – JERT convenes to begin assessment of long term actions, with ongoing meetings as necessary
- December 2013 – Staff Report to Central Coast Water Board on Post-Construction Requirement implementation
- Fall 2014 – Central Coast Water Board staff and State Water Board staff report on progress to State Water Board

CONCLUSION

The Post-Construction Requirements remain well-founded and appropriate for the Central Coast. Staff has identified relatively straightforward and minor modifications that can be implemented over the short term to improve the requirements. Staff will pursue these short term actions. The need for further modifications to the Post-Construction Requirements beyond these short term actions is less certain. Following completion of the short term actions, staff will assess if additional modifications are necessary. If found to be necessary, staff will work with stakeholders to make necessary modifications, and will regularly report to the Central Coast Water Board on progress.

ATTACHMENTS

1. Central Coast Water Board February 20, 2013 Notification Letter to Joint Effort Stormwater Dischargers Regarding (1) State Water Board Adoption of Phase II Stormwater Permit and (2) Maintaining Schedule for Implementation of Central Coast Water Board Post Construction Requirements