



February 26, 2007

Via Electronic Mail & Federal Express

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: San Luis Obispo County Regional Storm Water Management Program

Dear Chair Young and Members of the Board,

On behalf of the Natural Resources Defense Council (NRDC) and our more than 100,000 California members, including thousands of members who live in the Central Coast region, we submit the following comments regarding the proposed resolution adopting County of San Luis Obispo Storm Water Management Program (“draft Program” or “SWMP”). NRDC thanks you for the opportunity to review and provide comments on the draft Program.

Overall, we remain greatly disappointed with the draft Program. We recognize that the draft resolution attempts to fix some of the inadequacies with the draft Program. However, the “band-aid” approach of the draft resolution fails to address the overarching and fundamental flaws with the draft Program. Chiefly, the draft resolution merely restates the language of the General Permit requiring development of major program components. As a result, the Board and stakeholder are unable to review major components—that should have been developed long ago considering the lengthy approval process. Thus, the draft Program fails to meet the federally mandated maximum extent practicable (“MEP”) standard and other measures required to assure compliance with water quality standards. In many instances, the draft Program fails to contain meaningful commitments to effectively control California’s number-one source of coastal pollution—polluted urban storm water runoff.

As we have repeatedly commented, the inadequacies of the draft Program are clearly demonstrated in light of new and existing storm water management programs in the region and throughout the country. For instance, the *Model Urban Runoff Program* and the nearly dozen programs discussed in NRDC and the Ocean Conservancy’s *A Practical Plan for Pollution Prevention* and other Central Coast programs make it plain that meaningful programs with commitments and near-term deadlines are practicable for similarly situated Central Coast communities—like San Luis Obispo County. More recently, the Board’s unanimous approval of the Monterey Regional SWMP bolsters

this point. It remains unclear how the Regional Board—if it approves the draft Program—can require a certain set of effective measures for the seven permittees under the Monterey Regional program and inexplicably excuse the County of San Luis Obispo from these measures. Such an approach clearly demonstrates that the draft Program fails to meet MEP.

Moreover, the Regional Board's review and approval process continues to follow a problematic and confounding pattern. Staff had previously noticed the same draft Program for comment last fall with a scheduled hearing. Then, inexplicably, the hearing was cancelled with no further notice or reason. The draft Program was again re-noticed with another hearing. However, the draft resolution proposes that the County "develop" and "establish" major program components—which will escape review by the Board members during a public hearing. This process unfairly and illegally limits public review and an opportunity to comment before the Board on final program components. In addition, this piece-meal approval process unduly burdens public review by requiring the public to follow an opaque and ever-changing process with draft documents totaling hundreds of pages. Federal and state law require a more transparent process which fully incorporates public participation.

In this connection, we incorporate by reference comments submitted by other environmental groups as well as our previous comments submitted for this Program and the Monterey Regional SWMP. While many improvements are necessary to meet MEP and protect water quality, the following is a list of major inadequacies in the draft Program, which are discussed in-depth in the Monterey Regional SWMP, *A Practical Plan for Pollution Prevention*, the *Model Urban Runoff Program*, and our comment letters:

- Impermissibly Vague. The draft Program repeats an intention to "develop" or "establish" basic program components that should have been developed long ago when the first draft was submitted in 2004. The limited discussion of the intention to develop these components lacks detail in terms of actual commitments and requirements. (*See, e.g.,* Program section 4 at 50, 56, 58, 59, 62, 65, 72.) As a result of these vague provisions, and as previously determined by this Regional Board, the public is unable to review the actual program elements or determine whether they will meet MEP and protect water quality. (*See Environmental Defense Center v. EPA*, 344 F.3d 832, 857-858 (9th Cir. 2003) (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)).
- Storm Water Pollution Impacts on Sea Otters. Based on numerous scientific articles, storm water pollution contributes to sea otter mortality and morbidity in San Luis Obispo County's receiving waters. As the chief mechanism for controlling storm water pollution, the draft Program fails to adequately and comprehensively include meaningful measures to address this important regional problem. By contrast, other programs include specific components that require actions to reduce storm water pollution impacts on sea otters. The draft program contains limited measures for public education and ordinances for pet waste. This approach

not only fails to address the core of the problem, it also fails to monitor and assess whether control measures are effective. For example, the seven permitting entities in the Monterey Region have committed to “identify with specificity the geographic areas within the jurisdiction of each municipality that are sources of pollution, including T. Gondii, and other pathogens, impacting California sea otters” and “create a program to reduce and eliminate the sources of pollution identified as impacting sea otters.” (MRSWMP Table 4-1, Page 16.)

- Water Quality Monitoring. The draft Program contains no provisions that commit to water quality monitoring. Instead, the draft Program relies solely on monitoring conducted by “volunteers.” This approach is unacceptable because there are no assurances that meaningful water quality monitoring will occur during the permit term. Water quality monitoring is essential for determining the effectiveness of the Program. In fact, other Central Coast storm water management programs mandate water quality monitoring as part of their programs. For example, the program for the seven regional municipalities in Monterey peninsula commits to monitoring a minimum of 25 percent of all outfalls at least four times a year, accounting for seasonal variation. Likewise, the City of Santa Barbara’s program requires water quality monitoring of its outfalls and receiving waters.
- Compliance Inspections and Screening Dry Weather Flows. The draft Program fails to require actual compliance inspections (in addition to education efforts/audits) of all commercial and industrial facilities. (See Program section 4 at 51.) Compliance inspections as well as business inventories are basic requirements in storm water management programs. Even though there is a vague mention of inspections of some businesses for illicit connections, it is entirely unclear what percentage of inspections will be conducted and the frequency of inspections. As discussed by the U.S. Environmental Protection Agency in its evaluation of other programs, “The low level of measurable goals does not appear to add up to developing, implementing, and enforcing an effective storm water management program.” (Ltr from Alexis Strauss EPA Region IX (Feb. 8, 2006).) The draft Program should clarify the commitment to actively screen dry weather flows as well as the methods for the screening and inspection of the storm drain system.
- Response and Enforcement. Although the draft Program indicates that guidelines and procedures will eventually be established, the delay in developing these guidelines and procedures is inexcusable considering that numerous examples are widely available. The draft Program also fails to include adequate response time and enforcement measures throughout the minimum control measures. For instance, the illicit discharge and detection program doesn’t describe the response procedures for when illegal actions are discovered. (Program section 4 at 49-50; see also 57, 58, 60, 63, 72, 74.)
- Construction Activity. The draft Program impermissibly delays implementation of measures for construction sites for over two to three years and fails to include basic requirements, such as required BMPs and compliance inspections. (See Program section 4 at 59.) Such a delay is unacceptable given the well-documented negative impact of construction activity on water

quality as well as the rapid pace of development in the Central Coast. In addition, the draft Program should clarify the commitment and the detailed procedures for construction site inspections with meaningful measurable goals. Moreover, the draft Program fails to have any requirement for construction activity under one acre—which is regulated in other Central Coast programs. The County’s approach leaves a loophole for an entire category of construction activity in the region.

- New Development and Redevelopment. The majority of post-construction storm water management in new development and redevelopment is impossible to review given that much of the program has yet to be developed by the County. It is also unclear what will actually be required under this component. In addition, the majority of the program will not be developed until year three, let alone actual implementation. (See Program section 4 at 62, 64.) Because of the multi-year delay in developing and implementing basic requirements, such as self-certification, inspection procedures, and revisions of the County’s ordinance, general plan, and CEQA checklist, the draft Program’s development review process is meaningless. Moreover, instead of relying on low impact development (“LID”) practices that are over half a decade old, the County should utilize more recent models in designing the LID manual (See NRDC Oct. 5, 2006 letter, Part 2.B.)
- Storm Drain Cleaning. The draft Program indicates that it will “Implement routine inspection and cleaning procedures for schedules for storm drain catch basins and other components of the storm sewer system that require cleaning at least twice per year on an ongoing basis.” (Program at 71.) This BMP will be implemented in year 2. Based on this brief description it is unclear what the County proposes to do with respect to storm drains. A basic component of storm water management programs is to inspect and clean all catch basins and storm drains multiple times throughout the year, and definitely prior to the rainy season. Other programs also include stepped-up inspection and cleaning for hot-spot areas. All of these measures are lacking in the proposed Program.
- Street Sweeping. The draft Program merely indicates that street sweeping will occur on a “quarterly or sooner” basis in “heavily soiled areas” and will begin in the second permit year. (Program section 4 at 70.) Such street sweeping efforts are unacceptable given that street sweeping is a basic municipal activity and most communities have weekly street sweeping—especially in high traffic areas. Moreover, it is unclear what the draft Program proposes to do for all other streets.
- Impermissible Delay. The County admits that the draft Program “capitalizes on aligning existing water quality activities and storm water management with current BMPs.” (Program at ii.) However, the County cannot proffer a collection of pre-existing activities to meet its obligations under the Clean Water Act and Porter-Cologne Act. Moreover, the County cannot use its pre-existing activities as a basis to delay implementation of basic program components—especially when these components are currently implemented within the Central Coast as well as in similarly-sized communities throughout the United States. In

fact, the County has had over two years to “develop” and “establish” these components since the first draft was submitted in 2004. Examples of basic components that are impermissibly delayed are:

- storm drain stenciling for all communities (Program section 4 at 20, 40)
 - mapping delayed over five years (Program section 4 at 48)
 - ordinances adoption delayed to years 2-5 (Program section 4 at 47, 53, 56, 62)
 - illicit discharge and detection checklist and enforcement delayed to year 3 (Program section 4 at 50, 51, 52)
 - municipal staff training of construction sites (Program section 4 at 59)
 - post-construction measure delayed until year 3 (Program section 4 at 62-64)
 - street sweeping delayed to year 3 (Program section 4 at 70)
 - storm drain inspection and cleaning delayed to year 2 (Program section 4 at 71)
- Maximum Extent Practicable Standard. The draft Program misapplies the MEP standard by excluding consideration of its guiding principle—technical feasibility. (*See In re Bellfower, et. al*, State Board Order 2000-11 at 20 (technical feasibility is the “focus” of MEP; *see also* Program section 2 at 10.) This misapplication of the MEP standard is compounded by the draft Program’s concentration on costs and available resources as a basis for limiting its BMPs and measures. (*See, e.g.*, Program section 1 at 2, section 2 at 10.) These assertions are difficult to understand considering that the County’s proposed 2006-07 budget for all funds is \$434,540,960 with a general fund budget of \$357,975,916. (County Budget Message 2006-2007 (May 8, 2006).) Thus, the County’s storm water budget of \$138,000—even with the reported \$28,000 increase for the new program—is less than 1 percent of all funds. In fact, the storm water budget is merely .03 percent of all funds and .04 percent of the general fund, which funds the Program. Cost limitations become more tenuous given that the County boasts “continued solid growth in local revenue” and “an improved state financial outlook”. (County Budget Message 2006-2007 (May 8, 2006).)
- Commitments and Quantifiable Targets. The components of the draft Program fail to include detailed commitments and quantifiable targets. For instance, the public education and public participation program fails to indicate what will actually be required. It also fails to include the corresponding quantitative numbers, such as events attended, the audience reached, surveys conducted, or financial commitment by the County for public participation events, like coastal and creek cleanup. (*See, e.g.*, Program section 4 at 39-41.) Moreover, the commitments of the other six communities covered by the proposed Program are unclear or non-existent with respect to storm water pollution control.

In its current form the draft Program does not ensure the efficient reduction of storm water pollution in the County in a manner consistent with the MEP standard, applicable discharge prohibitions, and receiving water limitations. This failure becomes even more evident considering that neighboring Central Coast communities have approved plans that effectively control runoff. As such, the draft Program cannot be approved in its current form and must be

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modified to contain specific program elements that meet the requirements of the General Permit and federal law.

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

Sincerely,

A handwritten signature in black ink, appearing to read "D. Beckman", written in a cursive style.

David S. Beckman

Anjali I. Jaiswal

Michelle S. Mehta

Electronic cc: Roger Briggs, RWQCB, Region 3
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