



CITY OF SALINAS

Public Works Department • 200 Lincoln Avenue • Salinas, California 93901 • (831) 758-7241

January 25, 2012

Via Electronic Mail and U.S. Mail

Jeffrey S. Young, Chair
Roger Briggs, Executive Officer
Central Coast Regional Water Quality Control Board
805 Aerovista Place, Suite 101
San Luis Obispo, California 93401-7906

Re: City of Salinas Municipal Storm Water Permit CA 0049981; Draft Order No. R3-2012-0005

Dear Mr. Young and Mr. Briggs:

The City of Salinas appreciates the opportunity to submit comments on the Central Coast Regional Water Quality Control Board (“Regional Board”) Staff’s Report on the Draft Municipal Storm Water Order No. R3-2012-0005 (“Draft Permit”). We recognize that the Draft permit represents over a year’s worth of significant and ambitious effort by Regional Board staff. We appreciate the regular dialogue that has occurred between City staff and Regional Board staff which has occurred over the past several weeks, including the regular telephone conferences and the public workshops held in Salinas, and are pleased with the Regional Board staff’s decision to schedule the Draft Permit for consideration in the city of Salinas. Given the significant impact we expect the Draft Permit to have on the City of Salinas and its residents and businesses, it is important that matters such as this be considered in a forum which affords the greatest possible opportunity for those affected by the Draft Permit to participate in the Regional Board’s consideration of the Draft Permit. To that end, we understand that the Regional Board staff is recommending that the Draft Permit be adopted as presented in its Staff Report; however, the City continues to have concerns with the content of the Draft Permit and the practicability of implementation of certain provisions of the Draft Permit.

The City received the Regional Board Staff Report—which consists of a total of 907 pages, including attachments—via email on January 10, 2012, at 8:00 P.M. Most of the Staff Report is a repeat of material which the City had previously received and reviewed; however, some of the material is entirely new. The City notes that the time period it was given to review and to comment on the Staff Report was insufficient given the breadth, length, and significance of the material. It is unfortunate that more time was not allotted given the significance of this document to the City and its residents and businesses. Nonetheless, the City has done its best to review the materials within the time allotted and submits the following comments on the Staff Report and the revised Draft Permit. The City requests that the Regional Board take these comments into consideration as it deliberates the adoption of the Draft Permit.

As the City has pointed out in previous correspondence to Regional Board staff¹, the original Draft Permit contained numerous provisions which are vague and subject to various interpretations. Some of such Draft Permit provisions have been rewritten in the revised Draft Permit to address the City’s concerns, however, through our review of the Staff Report and the revised Draft Permit it is clear that

¹ The City submitted written comments on the Draft Permit to Regional Board staff on October 31, 2011.

some provisions remain vague and subject to various interpretations. Before the Regional Board adopts a permit and exposes the City to liability and enforcement action, it must be certain that the City has a full and accurate understanding of the permit's provisions so that that may be effectively implemented and enforced by the City to ensure the intent of the permit is met. The City understands that the dialogue between the City staff and Regional Board staff will continue following the Regional Board's adoption of a permit, however, if the goal of the permit is indeed as the Regional Board staff has stated—"to reduce the discharge of pollutants in stormwater discharges to the MEP and to protect water quality and beneficial uses, including achievement of water quality standards"—the Regional Board should be sure that the permit is clear and unambiguous so that it may be effectively implemented. Unfortunately, the City finds that not all the provisions of the revised Draft Permit are clearly enough written to be implemented with certainty.

Of primary concern to the City is the economic feasibility of implementing the revised Draft Permit provisions and the practicability of implementing the revised Draft Permit provisions in an effective way. The City is concerned that it will be unable to afford to comply with the permit's provisions and that the permit's provisions will have a chilling effect on economic development within the city. Further, the lack of resources at the City and the continuing decline in available resources, coupled with an unclear and ambiguous revised Draft Permit, the City will be hard-pressed to (1) meet the ambitious deadlines for compliance set out in the revised Draft Permit and (2) implement the revised Draft Permit in an effective way. City staff have estimated that the cost to comply with the Draft Permit provisions will be a substantial increase from the cost already incurred by the City in complying with its existing NPDES Permit. The additional cost to the City results from Draft Permit provisions which City staff understands to contain new programs or higher levels of services from what is required under the City's existing NPDES Permit.

In its Staff Report, Regional Board staff state that they have "considered the best stormwater cost information available" in their preparation of the revised Draft Permit and also state that "[i]t is very difficult to ascertain the true cost of implementing stormwater management programs because of highly variable factors among different municipalities and inconsistencies in reporting by Permittees. Reported costs of compliance for the same program element can vary widely from Permittee to Permittee, often by a wide margin that is not easily explained." The studies cited in the Staff Report, however, were published in 1998 to 2003 and cite information from localities other than Salinas. The City is concerned that these studies may be outdated, in particular because they were prepared and published prior to the economic recession which continues to affect the nation, and are not reflective of the conditions which exist in Salinas.

With respect to the hydromodification criteria set out in the revised Draft Permit, there may be unintended consequences which operate counter to what the City understands to be the intent of the stormwater regulations. The standards have been changed so that the net effect of development and redevelopment is not the determining factor as in the net increase in impervious surfaces. The language has been changed so that creating and/or replacing impervious surfaces and/or turf are now the triggers. With the threshold language changed to include create and/or replace impervious surfaces, redevelopment projects which used to mitigate only the net impacts of additional impervious surfaces will now be required to follow the same requirements as an undeveloped project site. Therefore the cost for redevelopment is increased by the cost of demolition of the existing improvements. This makes undeveloped sites more attractive to develop than redevelopment sites.

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We appreciate your consideration of the comments in this letter and those which the City submitted on the original Draft Permit. The City has been and remains fully committed to meeting its stormwater obligations; however, we are concerned that the City not be unintentionally put into a position of non-compliance with permit provisions due to an overly-aggressive timeline and due to an unclear and ambiguous permit. We look forward to our continued discussions with Regional Board staff as a final permit gets adopted and ultimately implemented by the City.

Sincerely,

A handwritten signature in black ink, appearing to read "G. Petersen", with a stylized flourish at the end.

Gary E. Petersen
Public Works Director

cc: Mayor and City Council
Interim City Manager
City Attorney
City Engineer