

Central Coast Regional Water Quality Control Board

June 18, 2013

Robert K. Murdoch
Public Works Director
County of Monterey
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Salinas, CA 93901
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VIA ELECTRONIC AND CERTIFIED MAIL
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CENTRAL COAST WATER BOARD NOTICE OF VIOLATION BASED ON RESULTS OF LIMITED COMPLIANCE AUDIT, COUNTY OF MONTEREY STORM WATER MANAGEMENT PROGRAM, WDID NO. 3 27MS03012, MONTEREY COUNTY

Dear Mr. Murdoch:

On March 15, 2013, Central Coast Regional Water Quality Control Board (Central Coast Water Board) staff conducted a partial compliance audit of the County of Monterey's (County) Municipal Separate Storm Sewer System (MS4) program. Central Coast Water Board staff verbally reviewed with County staff the preliminary findings of the audit and this Notice of Violation (NOV) on March 15, 2013 and June 13, 2013, respectively. This letter formalizes the audit findings and describes the next steps.

1. Introduction

The County is a co-permittee along with seven other participating entities in the Monterey Regional Stormwater Permit Participants Group (Monterey Regional) enrolled in National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000004, *Waste Discharge Requirements for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems* (Municipal General Permit). The Municipal General Permit in effect through June 30, 2013 is Water Quality Order No. 2003-0005-DWQ. On July 1, 2013, Water Quality Order No. 2013-0001-DWQ becomes the effective Municipal General Permit

The audit focused on evaluation of the County's compliance with the Construction Site Management program element and the Post-Construction Management in Development program element. Central Coast Water Board staff did not evaluate all components of each program element. Therefore, the County should not consider this letter as a comprehensive evaluation of these program elements.

Section 40 of the Code of Federal Regulation (40 CFR 122.41[i]) and Municipal General Permit Section H.10 provides the authority to conduct the audit. Central Coast Water Board staff reviewed documents, interviewed County staff and visited several sites. Dry weather conditions were experienced during the audit.

The primary representatives involved in the audit were the following:

County Representatives: Tom Harty, Civil Engineer
Karen Riley-Olms, Grading Inspector
Randy Herrington, Grading Inspector
Tom Moss, Senior Hydrologist
Enrique Saavedra, Senior Civil Engineer
Lew Bauman, Administrative Officer
Michael Rodriguez, Chief Building Official
Paul Greenway, Assistant Director of Public Works
Benny Young, Resource Management Agency Director
Anna Quenga, Associate Planner
Cynthia Bettencourt, Land Use Technician
Carl Holm, Resource management Agency Deputy Director
Mark Setterland, Deputy Building Official

Central Coast Water Board Representatives: Jennifer Epp
Julia Dyer

2. Program Evaluation Results

Central Coast Water Board staff has grouped the audit findings into the following categories:

- Violations - Areas where the County was out of compliance with the Municipal General Permit requirements;
- Program Deficiencies - Areas where the County's program needs improvement to achieve the Maximum Extent Practicable (MEP) standard;
- Recommendations – Suggestions to improve the County's program; and
- Positive Attributes – Components of the County's program that indicate the County's overall progress in implementing the Program.

Each violation and deficiency is identified with a “comment reference number” shown in a box to the right of the finding for ease of future reference and discussion or response.

2.1 Evaluation of Construction Site Management

Central Coast Water Board staff accompanied County inspection staff to four private active construction sites and one active capital improvement project construction site.

2.1.1 Private Construction Site Inspection

Central Coast Water Board staff visited the following construction sites during the audit with County inspection staff. Each site was under active construction during the audit:

- 3755 Rio Road, Carmel. This is a residential home construction project disturbing less than an acre and is not enrolled in the Construction General Permit. Julia Dyer (Central Coast Water Board) visited the site with Karen Riley-Olms (County Grading Inspector).
- 25613 Shafter Way, Carmel. This is a residential home construction project disturbing less than an acre and is not enrolled in the Construction General Permit. Jennifer Epp and Julia Dyer (Central Coast Water Board) visited the site with Karen Riley-Olms and Randy Herrington (County Grading Inspectors).
- 24332 San Juan Road, Carmel. This is a residential home construction project disturbing less than an acre and is not enrolled in the Construction General Permit. Jennifer Epp

(Central Coast Water Board) visited the site with Randy Herrington (County Grading Inspector).

- Sea Gardens Apartments at 10603 Axtell Street, Castroville. This is a multi-family dwelling construction project disturbing greater than an acre and is enrolled in the Construction General Permit (WDID 327C363184). Jennifer Epp (Central Coast Water Board) visited the site with Randy Herrington (County Grading Inspector).

Positive Attributes

Central Coast Water Board Staff observed the following positive attributes of the Grading Inspectors during the audit:

- Demonstration of knowledge of appropriate construction site stormwater BMPs and inspection procedures;
- Following procedures to correct deficiencies at the sites;
- Using an integrated information management system that enabled efficient documentation of their inspections and follow up actions as well as the ability to access records of previous inspections; and
- Making use of inspection checklists.

Recommendations

Overall, the Grading Inspectors demonstrated knowledge of appropriate construction site stormwater inspection procedures. Central Coast Water Board staff provide the following recommendations based on audit observations to improve the County's construction inspection process:

- When performing a stormwater inspection, the inspector should include a walk around the perimeter of the site as part of typical inspection practice. This can be an effective tool to detect areas where sediment or other pollutants have the potential to leave the site during a storm event.
- Inspectors should observe trash management throughout the site and correct deficiencies.
- Inspectors should look for evidence of spills (e.g. paint dumped onto the ground) and correct deficiencies.
- Inspectors should be prepared to answer questions from contractors explaining how BMPs protect water quality.

2.1.2 County of Monterey Capital Improvement Project Construction Site Inspection

The Schulte Road Bridge is a capital improvement project managed by the County. This project is enrolled in the Construction General Permit (WDID 327C363903) and is subject to Clean Water Act Section 401 Water Quality Certification No. 32711WQ12. The County manages construction inspection for capital improvement projects differently than for private construction projects. The Public Works department conducts construction inspection oversight for capital improvement projects. Julia Dyer (Central Coast Water Board) visited this construction site with Enrique Saavedra (County Public Works Senior Civil Engineer).

Positive Attribute

Central Coast Water Board staff observed the following positive attribute during the audit:

- County staff demonstrated knowledge of appropriate construction site stormwater BMPs and inspections procedures.

Comment Reference Numbers

2.1.3 County of Monterey Capital Improvement Project Construction Management

Deficiency: County capital improvement construction projects are completed without having reached final stabilization.

Central Coast Water Board staff reviewed project files for two County capital improvement construction projects, the Lonoak Bridge project and the San Benancio Bridge project. For both projects, the County finished construction without completing final stabilization for erosion at the site. At the time of the audit, the County was still working to achieve final stabilization at these sites even though County staff reports construction was completed in July 2012 for the San Benancio Bridge project and in January 2012 for Lonoak Bridge project.

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Action: The County must ensure final stabilization to control erosion occurs for all capital improvement projects prior to completing construction. The County must take measures at the Lonoak Bridge and San Benancio Bridge project sites to achieve final stabilization.

Deficiency: The County doesn't have a mechanism in place to ensure stormwater inspections of capital improvement projects are documented and tracked as required by the Monterey Regional Stormwater Management Plan.

The County doesn't have a mechanism in place to document and track inspections of capital improvement projects for compliance with the Monterey Regional Stormwater Management Plan (SWMP). The inspection requirements of the Monterey Regional SWMP apply to all projects (both private development and capital improvement projects).

2

Action: The County must develop procedures to ensure compliance with inspection requirements of the Monterey Regional SWMP for capital improvement projects. The County must track these inspections and include the information in their annual reporting of compliance with the Municipal General Permit and Monterey Regional SWMP.

2.2 Evaluation of Post-Construction Management in Development

In its October 20, 2009 letter, Central Coast Water Board staff required municipalities wishing to participate in the Central Coast Water Board's Joint Effort for developing hydromodification control criteria (Joint Effort) to amend their SWMPs. The required amendments included incorporation of the new Best Management Practices (BMPs), and removal and/or revision of existing SWMP language that duplicates or conflicts with the language in the new BMPs. On March 2, 2010 Central Coast Water Board staff approved the revised Monterey Regional SWMP, incorporating amendments aligning it with the Joint Effort. The revised SWMP required Monterey Regional Stormwater Participants (including the County) to implement and track interim Low Impact Development (LID) requirements beginning on January 1, 2011.

Central Coast Water Board staff interviewed County staff to assess compliance with the Post-Construction Management in Development program element of the Municipal General Permit. Following is a summary of the audit findings for this program element.

Violation of Municipal General Permit Section D.1 for failure to implement Monterey Regional Stormwater Management Plan BMP 5-7.e to apply interim LID principles and features to all new and redevelopment projects.

BMP 5-7.e of the Monterey Regional SWMP requires the County (as of January 1, 2011) to apply interim LID principles and features to all applicable new and redevelopment projects by implementing procedures for the permit application review process and ensuring LID is applied to one-hundred percent of all applicable new development and redevelopment projects.

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Monterey County summarized the County's interim LID requirements in their document titled *Summary of the Interim Low Impact Development Program - County of Monterey, California*. The County's interim LID requirements define Tier 1 and Tier 2 projects and describe the applicable requirements for each tier. During the audit, County staff stated that they were not aware of any development projects approved since January 2011 that met the definition of a Tier 2 project. County staff stated they had not been requiring projects that met the definition of Tier 1 to implement the specified interim LID requirements. This failure to implement the Monterey Regional SWMP is a violation of Municipal General Permit Section D.1.

Action: The County must ensure all applicable new development and redevelopment projects (both private and capital improvement projects) apply the County's interim LID requirements.

Violation of Municipal General Permit Section D.1 for failure to implement Monterey Regional Stormwater Management Plan BMP 5-7.f to develop and maintain an interim LID application review tracking report.

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BMP 5-7.f of the Monterey Regional SWMP requires the County (as of January 1, 2011) to develop and maintain a tracking report for use during the permit application review process identifying interim LID design principles and features that are incorporated into each applicable new development and redevelopment project. Monterey Regional developed a tracking form titled *LID Worksheet & Implementation Tracking Form* for the County and the other participating entities to document review of interim LID requirements. During the audit, County staff stated that they were not using the form, or any other method to track development projects for compliance with the County's interim LID requirements. This failure to implement the Monterey Regional SWMP is a violation of Municipal General Permit Section D.1.

Action: The County must develop and maintain a tracking report for use during the permit application review process identifying interim LID design principles and features that are incorporated into each applicable new development and redevelopment project (both private and capital improvement projects).

Deficiency: County planning staff didn't demonstrate the level of knowledge required to implement the Municipal General Permit and Monterey Regional SWMP requirements effectively.

Planning staff were not knowledgeable enough about the Municipal General Permit and Monterey Regional SWMP requirements to provide adequate guidance to applicants. Planning staff work with project applicants during critical points in the project planning phase for designing sites to incorporate LID principles. Planning staff need increased knowledge of the Municipal General Permit and Monterey Regional SWMP requirements to guide applicants toward compliance with the post-construction requirements.

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Action: The County must review and revise their staff training to increase its effectiveness and ensure staff has the level of knowledge required to implement the post-construction requirements effectively. The County must identify what types of knowledge are required of planning staff, determine the knowledge gaps that exist, and implement actions that result in filling the gaps.

Deficiency: The County's pre-application conferences were not incorporating the Municipal General Permit and Monterey Regional SWMP requirements.

The County holds pre-application conferences with project applicants to facilitate applicants' understanding of County development requirements. County staff stated that the post-construction requirements of the Municipal General Permit and Monterey Regional SWMP

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were not currently discussed during pre-application conferences. County staff should be guiding applicants toward compliance with the post-construction requirements during these pre-application conferences.

Action: The County must include post-construction requirements of the Municipal General Permit and Monterey Regional SWMP in their pre-application conferences with applicable project applicants.

2.3 Other Observations

Positive Attributes

Central Coast Water Board staff observed the following positive attributes of County lead stormwater staff during the audit:

- Demonstration of thorough knowledge of Municipal General Permit requirements;
- Commitment to a successful stormwater program; and
- Active participation in Monterey Regional management activities.

Having knowledgeable, committed staff is a key aspect of a successful stormwater program. The County's participation in Monterey Regional management activities is beneficial for effective collaboration and program efficiencies within the Monterey Regional group.

Deficiency: The County's enforceable mechanisms are not adequate to respond to stormwater complaints in an effective and timely manner

As part of the audit review, Central Coast Water Board staff reviewed a complaint received by Central Coast Water Board staff on March 13, 2013 from a resident of Prunedale who was concerned about potential illicit discharges from her neighbor's property. The site is located within the County's Municipal General Permit coverage area and the resident stated she previously contacted County staff about the issue. County staff report that the site is subject to an existing code enforcement case but the County lacks the enforceable mechanisms to resolve the complaint in an effective and timely manner. BMPs 3-1.c and 3-3.d of the Monterey Regional SWMP requires the County to investigate and take appropriate action on each report of potential illicit discharge that is received.

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Action: The County must evaluate its existing enforceable mechanisms to determine the gaps that exist in the County's tools and resources to respond to and resolve stormwater complaints. The County must implement actions that result in filling the gaps. The County must investigate and take appropriate action on each report of potential illicit discharge that is received.

3. Conclusion

The County must correct program violations as soon as possible. By August 26, 2013, the County must provide a report (referencing each comment reference number) that explains how and when the County corrected the violations identified in this letter. **The County must update its program to correct all deficiencies and report on the correction of each deficiency as an attachment to the 2012-2013 Annual Report** (referencing each comment reference number). Central Coast Water Board staff will conduct a follow-up audit to assess the progress of the County in correcting all program violations and deficiencies. The County must keep detailed records of actions taken to correct violations and deficiencies, and the results of these actions, to demonstrate that the violations and deficiencies have been corrected.

Central Coast Water Board staff requires the County to submit information in response to this letter pursuant to Municipal General Permit Section H.9 and the 2013 Municipal General Permit (revised Municipal General Permit effective as of July 1, 2013 per Order No. 2013-001-DWQ), Attachment F, Section 9. Central Coast Water Board staff requires the County to submit their 2012-2013 Annual Report by **November 15, 2013** pursuant to 2013 Municipal General Permit, Section E.1 and Attachment F, Section 9.

In accordance with California Water Code section 13385(a), the County's violation of the Permit subjects it to civil liability. Pursuant to Water Code section 13385(c), the Central Coast Water Board may impose civil liability for up to \$10,000 per day for each violation. If the Central Coast Water Board elects to refer the matter to the Attorney General, the superior court may impose civil liability for up to \$25,000 per day for each violation (Water Code 13385(b)). Central Coast Water Board staff's recommendations for further enforcement will depend on the County's response to this Notice of Violation. The Central Coast Water Board reserves its right to take any enforcement action authorized by law.

Central Coast Water Board staff did not examine all aspects of the County's stormwater program implementation. Therefore, the County should not consider the positive attributes, violations, and deficiencies noted in this letter to be a comprehensive evaluation of the County stormwater program. Central Coast Water Board staff may choose to conduct a more complete review of the County's stormwater program or an additional audit focusing on different program elements in the future.

Central Coast Water Board staff is available to work with the County to achieve a program which complies with the Municipal General Permit and is increasingly effective at reducing the discharge of pollutants to the maximum extent practicable and protecting water quality.

If you have any questions regarding this letter, please contact **Jennifer Epp** at (805) 594-6181 or at jepp@waterboards.ca.gov, or Phillip Hammer at (805) 549-3882.

Sincerely,

Michael Thomas

Digitally signed by Michael Thomas
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