



SAN LUIS OBISPO COUNTY
DEPARTMENT OF PUBLIC WORKS

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December 17, 2012

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814



MAIL & EMAIL

Subject: Comment Letter - Revised Draft (November 16, 2012) National Pollutant Discharge Elimination System Permit For the Discharge of Storm Water From Phase II Small Municipal Separate Storm Sewer Systems

Dear Ms. Townsend:

The County of San Luis Obispo appreciates the opportunity to again provide comments on the draft General National Pollutant Discharge System (NPDES) permit for stormwater discharges for small Municipal Separate Storm Sewer Systems (MS4s). As previously stated, we are committed to maintaining the quality of our water resources as evidenced by our efforts to address long-standing water quality issues around The Morro Bay estuary, our adoption of the Integrated Regional Water Management Plan, and our adoption and implementation of our Stormwater Management Program well in advance of regulatory deadlines. San Luis Obispo County will continue to support efforts to ensure the health and vitality of our local streams, rivers, lakes and ocean.

We acknowledge that this latest Draft Phase II General Permit contains substantial revisions from the previous draft and appreciate the State Water Resources Control Board for continuing to refine requirements as shown by your efforts with Receiving Water Limitation language. However, we find there are portions of the draft requirements which continue to be unrealistic, ambiguous, and inconsistent. Of significant concern is the inclusion of Attachment J that incorporates the Central Coast Specific Post-Construction Requirements into the State Permit. If Attachment J is adopted into the State Permit, anticipated revisions to the Region 3 Post-Construction Requirements would also require revisions and a reopener to the State Permit.

For nearly three years, the County has been engaged in the Joint Hydromodification Effort process being overseen by Dominic Roques of the Central Coast Regional Water Quality Control Board. In September, the Regional Board adopted Order #R3-2012-0025, which imposed the post construction hydromodification control measures developed through the Joint Effort. During that hearing, the Regional Board considered written and oral testimony from the development community and several Central Coast jurisdictions raising serious concerns about the Joint Effort's mandates. We are attaching our letter of July 6, 2012 for your review, as many of the concerns about the Joint Effort requirements are equally applicable to Attachment J of the proposed State General Permit.

To summarize, our concerns fall into two key categories:

1. We continue to be concerned that post-construction hydromodification requirements may conflict with AB 32 and SB 375. Assembly Bill 32 and Senate Bill 375 seek to reduce the state's greenhouse gas emissions. This is achieved by implementing a "sustainable community" strategy. Generally, the strategy involves reducing barriers to development in urban areas in order to protect agricultural and open space lands. From a water quality perspective, this strategy ensures that urban development (dominated by impervious surfaces) remains clustered around existing developed areas, thereby precluding conversion of open space lands to urban uses. From the local perspective and experience of working with individual projects and sites, we can see that applying hydromodification control measures on a site-specific level can conflict with the state's more regional approach to achieving sustainable development.

2. Joint Effort Hydromodification requirements have not been fully tested and necessitate revisions. To eliminate comment-redundancy, the County fully supports the comments submitted by the Statewide Stormwater Coalition (SSC) dated December 17, 2012 and CASQA comments dated July 6, 2012. Rather than focusing on the highly criticized 95th percentile runoff retention requirements and alternative compliance, we would like to focus on one aspect of the Watershed Management Zones (WMZ): the basis of whether a project will be subject to the 95th percentile requirement.

As the County began to implement the requirements, we discovered portions of Watershed Management Zones 1, 4, 7, and 10 that trigger 95% percentile retention requirements that encroach into areas with type C and D soils. For example, the WMZ 1 in Nipomo, California extends east of Highway 101 into areas which historically contain clay soils. Site specific soil reports taken from projects in this area clearly show the soils are not conducive to infiltration (i.e., C & D soils).

The development of the Water Management Zones did not include site specific soils analysis as that would be unreasonable; however, if a site specific soils report finds C or D soils, it is reasonable that these projects should not be held to the 95% requirement rather, they should be allowed to immediately default to the 85% percentile criteria. There is little justification to start the project at the highest tier requirement solely based on its location. Though we appreciate the Board's desire to recharge the underlying groundwater basins, is it the State's intention to require a developer to retain more run-off than the pre-project condition?

To better illustrate, the data from CIMIS station #52 in San Luis Obispo suggests the 95th percentile storm in the area to be 2.0 inches, and the 85th percentile is 1.2 inches! During the adoption hearing for Resolution R3-2012-0025, Board staff verbally claimed to the Regional Water Board that pre-project conditions would absorb all such run-off. Such statements are misleading as only in certain circumstances would this be the case. Unfortunately, the requirements ignore such circumstances and require projects to retain the entire 95% storm volume, clearly exceeding the pre-project condition in a majority of cases and requiring the capture of twice as much storm volume as the 85th percentile.

We request that the State Water Resources Control Board take the following action:

- Apply State General Permit requirements on a statewide basis. With Attachment J, the State permit will essentially impose a different set of requirements on the Central Coast Region. Other regions of the state will follow the "general" requirements. If the intent is not to apply general

standards, but instead to base requirements on region-specific hydrologic characteristics, this is something best left to the Regional Boards.

- Do not include Attachment J with the State General Permit. Instead, allow the statewide standards to apply to the Central Coast Region. We understand that the Regional Board still has the authority to issue orders and require more stringent standards¹. If the State Board's legal counsel determines this not to be the case, then all references to the determinations of a Regional Board Executive Officer must be removed from the permit.
- Consider the issues raised by the petitioners. The Cities of Lompoc, Goleta, and Watsonville have petitioned the State Board for review of the Regional Board's Joint Effort order. In addition, the Statewide Stormwater Coalition (SSC) and CASQA have commented. We urge you to consider and address all issues raised by these jurisdictions and organizations
- Allow the Joint Effort Review Team to proceed. The Joint Effort Review Team (JERT) was reconvened by the Regional Board. The JERT is considering the practical application of Joint Effort requirements. There is a general agreement among the JERT members that certain requirements are impractical or infeasible and may require modification. The State should seek input from the JERT before including Joint Effort requirements within the State General Permit.

We urge your Board to again reconsider the Draft Phase II Permit language and incorporate our recommendations. We appreciate the opportunity to comment and look forward to language that sets forth a clear process for agencies to maintain permit compliance.

Sincerely,



PAAVO OGREN
Director

File: CF 900.70.01

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¹ At the May 18, 2012 workshop in Santa Maria, this was, in essence, Phil Hammer's response to a question from one of the Central Coast agencies.



SAN LUIS OBISPO COUNTY

DEPARTMENT OF PLANNING AND BUILDING AND DEPARTMENT OF PUBLIC WORKS

July 6, 2012

California Regional Water Quality Control Board
Central Coast Region
Attn: Dominic Roques
895 Aerovista Place, Suite 101
San Luis Obispo, Calif. 93401

[email: r3_stormwater@waterboards.ca.gov]

Subject: Post-Construction Stormwater Management Requirements for Development Projects in the Central Coast Region (Draft Resolution No. R3-2012-0025)

Dear Mr. Roques:

This letter is intended to respond to the draft requirements developed as part of the Joint Effort program being overseen by the Regional Water Quality Control Board. Throughout the process, the municipalities affected by these proposed requirements have communicated a number of serious concerns to Water Board staff. While the draft requirements acknowledge and respond to some of these concerns, there are many issues we feel the program fails to adequately address:

- **Conflict with strategic growth efforts.** In 2008, the Board of Supervisors incorporated strategic growth principles into the County's General Plan. These principles encourage increasing density and intensity of development in existing urban areas in order to preserve rural areas in their natural state. Recently, we have received grants from the Strategic Growth Council (a State agency) to identify and remove regulatory burdens to urban infill development.

Accommodating on-site stormwater management requirements would result in reduction of development intensity in urban areas. This stands in sharp contrast to the intent of the strategic growth principles. Projects that cannot accommodate on-site measures will realize added costs associated with the design, construction, and long-term maintenance of off-site measures. Consequently, we are concerned that adoption of these regulations could impose new burdens on urban infill development and increase pressure for suburban sprawl. We believe this conflicts with State policy regarding reduction of greenhouse gas emissions (e.g. AB 32 and SB 375).

Recommendations

1. Allow reduced performance standards for urban infill development (e.g. development within Urban Reserve Lines and Village Reserve Lines).
2. Work with local Metropolitan Planning Organizations (e.g. SLOCOG) to align stormwater management requirements with sustainable communities strategies.

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3. Allow municipalities the discretion to exempt certain urban infill projects from adherence to the Joint Effort requirements (e.g. development within Urban Reserve Lines and Village Reserve Lines).
 4. Establish a region-wide off-site mitigation program before imposing the Joint Effort requirements. This will ensure that an off-site mitigation option is in place and available to affected projects. In lieu of a programmatic approach, mitigation will be challenging to implement due to other regulatory constraints that accompany a project development and may not be a viable solution on a case-by-case basis.
- **Conflict with approved, but un-built, projects.** A number of projects have been approved by the County in the last five years, but remain un-built due to economic conditions. Joint Effort requirements could substantially affect site design and require that these projects go back through the discretionary land use permit and environmental review process. This would represent a considerable cost to applicants with projects in the "pipeline," who are already facing economic impediments to development.

Recommendations

5. Exempt projects which have already received discretionary permit approval from the Joint Effort requirements.
- **Regulated projects.** Hydromodification control requirements are triggered at 2,500 square feet of impervious surfacing. This threshold appears to be too low for infill development projects and road improvement projects.

Recommendations

6. Provide provisions allowing credit for infill projects, as the requirement sets an inconsistent precedent when compared to other laws and policies.
 7. Remove existing roads from regulated projects. The majority of existing roads within coverage areas have limited or constrained right-of-way. Lack of storm drains limit treatment to pavers or other subsurface treatment options not feasible or practical for such small scale projects. At a minimum, increase threshold triggers for existing roadways.
 8. Consider all Photovoltaic systems to be exempt from regulated projects as systems likely do not limit or reduce pervious soils. Please consider a trip to the California Valley Solar Farms to assess whether solar arrays warrant draft performance requirements. In addition, such requirements may conflict with State's Energy and Public Utility Commissions attempt to promote solar.
- **Uncertainty about the numeric criteria.** The numeric criteria required by Measures #3 (Runoff Retention) and #4 (Peak Flow Management) appear to be difficult to achieve. We have received feedback from local engineers and developers that these criteria may be technically infeasible in certain areas of the County.

Recommendations

9. Consider establishing a cost cap for hydromodification control measures. Contra Costa County, for example, caps the requirements at 2 percent of total project cost.

10. Consider implementing Joint Effort requirements as a "pilot project" for the first year in order to see how the performance standards would affect project design. This will allow the program to be revised to correct for unforeseen issues before the requirements are rigidly enforced.
11. Continue to collaborate and work with local jurisdictions, engineers, and builders to build consensus and establish numeric criteria that can be reasonably met.

- **Peak management performance requirements.** Draft language comments.

Recommendations

12. Consider revising draft language to include "at a minimum" when applying the Peak Management Performance Requirements as jurisdictions may require more stringent requirements.
- **Biofiltration treatment concerns.** The draft resolution appears to be too specific on trench dimensions, limiting potential alternatives based upon site constraints.

Recommendations

13. Revise language to state 24" depth prior to 12" gravel as a goal/target or provide alternative dimensions. If not all biofiltration trenches will be a minimum of 42"-48" in depth. Not all trenches should require landscape.
 14. To protect the drainage/storage gravel layer and extend the maintenance cycles of the BMP, liners should be permitted. Request data as to whether the use of filter fabrics would significantly interfere with infiltration.
- **Required hydrologic analysis.** Draft language requires projects greater than 22,500 square feet to have calibrated continuous simulation hydrologic model to select stormwater control measures.

Recommendations

15. Please clarify or provide acceptable programs or at a minimum expand on model criteria.
- **Costs associated with implementation.** It is uncertain how much staff time will need to be dedicated to implementation of the Joint Effort requirements. As these requirements are being mandated by the State, we believe funding to implement these new requirements should also be provided.

Recommendations

16. Assist jurisdictions in obtaining funding from the State to implement Joint Effort requirements.
17. If funding is not available to implement them, the requirements should not be mandated until funding is available.

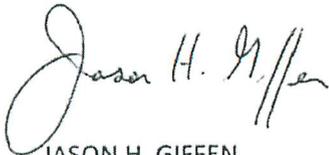
- Difficulty with long-term enforcement. Joint Effort requirements favor on-site, privately owned and maintained drainage facilities. While we already have a program under way to educate landowners about their responsibilities, past experience tells us that landowners do not always keep their drainage devices appropriately maintained. Having multiple private parties maintain and control LID features can make monitoring, inspection, and enforcement difficult.

Recommendations

18. Consider revising Joint Effort policies to encourage regional watershed improvement programs, where LID devices would be owned, controlled, and maintained by a single entity (e.g. maintenance district).

Thank you for this opportunity to comment on the proposed Joint Effort requirements. We hope you consider pursuing the recommendations we've outlined above. We look forward to participating in the Regional Water Quality Control Board hearing on September 6, 2012.

Sincerely,



JASON H. GIFFEN
DIRECTOR, PLANNING AND BUILDING



Dave Flynn for PAAVO OGREN
DIRECTOR, PUBLIC WORKS