

EXECUTIVE OFFICER'S SUMMARY REPORT
8:30 a.m., Thursday, October 1, 2009
David C. Joseph Board Room
5550 Skylane Boulevard, Suite A
Santa Rosa, California

ITEM: 4

SUBJECT: Santa Rosa, Sonoma County, and the Sonoma County Water Agency
NPDES Municipal Separate Storm Sewer System Storm Water Permit

DISCUSSION

The October 1, 2009, public hearing is being held to consider adoption of the draft National Pollutant Discharge Elimination System (NPDES) Storm Water Permit for discharges from the City of Santa Rosa, Sonoma County and the Sonoma County Water Agency's (Co-Permittees) municipal separate storm sewer systems (MS4s).

The Regional Water Board held a public meeting on July 22, 2009, to receive public testimony on the draft Permit and discuss comments, issues and concerns related to the draft Permit. The July 22, 2009 EOSR (Attachment 1) gives background on the issues related to the development of the draft Permit. This EOSR for the October 1, 2009 public hearing is, therefore, an update of events that occurred during and after the July 22, 2009 public meeting. (For additional background, please refer back to the July 22, 2009 agenda package.)

During the July 22, 2009, public meeting the Regional Water Board asked staff to work with the Co-Permittees and other commenters on the second draft Permit to make additional clarifications and modifications as needed. Staff made over 53 clarifications or modifications (Attachment 2) to the second draft Permit, Fact Sheet, and Monitoring and Reporting Program. This is in addition to the over 132 changes that staff had already made to the first draft Permit.

In revising the final draft Order (Attachments 3, 4, and 5) for Regional Water Board consideration, staff met with parties that requested a meeting. These meetings include:

- (a) Sonoma County Water Agency: August 6, 2009;
- (b) City of Santa Rosa: August 10, 2009;
- (c) Co-Permittees: August 19, 2009; and
- (d) Sonoma County: August 26, 2009.

Staff responded to public comments received on the second draft Permit (see Attachments 6 and 7); some of the modifications made to the draft Permit, Fact Sheet, and Monitoring and Reporting Program are based on these comments. Many of the comments received on the second draft covered the same issues addressed in the responses to comments in the first draft Permit.

NEW COMMENTS AND RESPONSES UPDATE

Staff received 17 comment letters on the second draft Permit. There were some new issues raised in comments on the second draft Permit or issues that need updating from the responses to comments on the first draft Permit. These issues include the permit boundary, Phase I permittees, Laguna de Santa Rosa Total Maximum Daily Load (TMDL), planning and land development requirements, Low Impact Development performance standards, and unfunded mandates.

Staff made many additional changes to the second draft Permit in response to the comments received. These changes are reflected in the draft Order. While we were able to resolve many of the Co-Permittees' concerns, we were not able to make all the changes they requested and meet the maximum extent practicable (MEP) standard. After adoption of the Order, staff will continue to work with the Co-Permittees and other stakeholders to implement the Order in a cost effective manner that protects water quality.

Permit Boundary

Commenters raised concerns regarding the decrease in the permit boundary from the first draft Permit to the second draft Permit, stating that this change would not be as protective of water quality. Staff negotiated with Sonoma County to keep the current permit boundary, rather than the entire county in the North Coast Region as proposed in the first draft Permit, in exchange for Sonoma County agreeing to address discharges from new development and redevelopment projects, municipal operations and illicit discharges on a county-wide basis. This agreement will be carried out in a non-point source waiver of waste discharge requirements, which staff believes will still protect water quality, while reducing the costs associated with expanding the permit boundary county-wide.

Phase I Permittees

In comments on the second draft Permit, Sonoma County argued that their inclusion in an MS4 Phase I permit was inappropriate because the population of the County is below 100,000 people. The boundary in the draft Permit is identical to the boundary in the previously adopted 2003 MS4 storm water permit.

U.S.EPA and federal regulations designate communities of 100,000 population or more, and *interconnected* MS4s for Phase I coverage. Sonoma County has an interconnected MS4 with the City of Santa Rosa. Municipalities that contribute sources of significant pollutants to waters of the United States may also be designated under a Phase I permit. Staff and the U.S.EPA (see their comment letter on the second draft) believe that the Fact Sheet supports such a determination.

In addition to the County's MS4 being interconnected with Santa Rosa's MS4 and being a source of significant pollutants to the Laguna de Santa Rosa watershed, areas of Sonoma County are rapidly growing and continue to experience new development. In

fact, the 2010 census may show that the population of the County now supports including additional areas within the MS4 Phase I permit boundary. Staff also notes that Sonoma County supports industrial areas where many people work that may not be counted in the population of those that live within the permit boundary. Sonoma County supports many visitors to the area with activities aimed at attracting tourists.

Additionally, Sonoma County has been a Phase I permittee for over a decade and U.S.EPA has found that this is appropriate (see their comment letter on the second draft). To allow the County to become a Phase II permittee at this late date may cause issues under the Clean Water Act with respect to backsliding.

Even if such a change was legally permissible, it is unlikely that being a Phase II permittee would allow the County to disregard existing requirements under the Phase I MS4 program. The primary difference between the Phase I and II programs is the time allowed to develop a storm water management program. The substantive requirements of each permit, however, are similar and they both include the same minimum measures. The next statewide Phase II permit (scheduled for adoption next year) will most likely be very similar to a Phase I permit. Some existing Phase II cities in the North Coast Region have program tasks similar to those contained in the proposed permit.

Laguna de Santa Rosa TMDL

The City of Santa Rosa requested the TMDL be removed from the draft Permit, stating that it is not a valid TMDL. Staff disagrees and believes that it is a valid TMDL since it was approved by both the Regional Water Board and U.S.EPA. However, since the TMDL did not include a final compliance date, staff considers the waste loads as goals only and not enforceable effluent limitations. To clarify this issue, the TMDL was moved to the fact sheet to support permit requirements such as nutrient related inspections and outfall monitoring. When the updated TMDL is completed, its waste load allocations will be incorporated into the Phase I Storm Water Permit for the City of Santa Rosa, the County of Sonoma, and the Sonoma County Water Agency.

Planning and Land Development Requirements

Several commenters stated that the planning and land development requirements of the draft Permit, specifically the size threshold for new development, had been inappropriately softened from 5,000 to 10,000 ft² (for commercial and industrial development) in the second draft Permit, which is less stringent than requirements in other recently adopted MS4 permits in California. Staff balanced the cost concerns of the Co-Permittees with the need to protect water quality from the discharge of pollutants from new development. Staff believes proposed requirements in the second draft and final draft Permit meet the MEP standard at this time. U.S.EPA agrees that the size thresholds proposed in the draft Permit are an appropriate minimum requirement.

Low Impact Development (LID) Performance Standards

Several commenters (including U.S.EPA) stated that the draft Permit needs to have more explicit performance standards than what were proposed in the second draft. Staff agrees and made several modifications, including requiring the Co-Permittees to obtain Executive Officer approval prior to their own approval of post-construction storm water treatment controls other than the preferred controls. Commenters also requested that Regional Water Board staff require the full capture of the design storm onsite, consistent with other recently adopted California MS4 permits. Staff clarified language in the final draft Permit to emphasize a goal of matching pre- and post-project hydrology by incorporation of LID measures. However, because infiltration of storm water can be difficult in clay soils, we did not include the requirement that all runoff from the design storm be fully captured onsite as requested.

Unfunded Mandates

The Co-Permittees again commented that requirements in the draft Permit contain unfunded mandates. Staff disagrees for reasons explained on page 16 of the Fact Sheet, and State Water Board legal staff is currently reviewing a recent decision of the Commission on Unfunded Mandates on test claims submitted by the County of Los Angeles and several cities.

In that decision, the Commission found only the requirement for trash receptacles at transit stops to be an unfunded mandate. This draft Permit does not require trash receptacles to be placed specifically at transit stops, and allows the Co-Permittees to determine where trash receptacles should be placed within their jurisdiction and what number should be placed. Therefore, we do not believe that the language in the draft Permit would be considered an unfunded mandate by the Commission.

COST ESTIMATES

Staff requested the Co-Permittees provide detailed estimates of costs for implementing the draft Permit to allow staff to evaluate costs in relation to permit requirements and compare them to other storm water management programs implemented by equivalent permittees in the State. The process staff followed to obtain this information is described in Attachment 8. Staff met several times with the Co-Permittees to discuss cost estimates. At every meeting, staff was able to reduce the costs estimated by the Co-Permittees by explaining permit requirements and making clarifications to the draft Permit. Staff has included all the information received on estimated costs in Attachment 8, but the process has continued beyond the last submittal. Staff made several changes to the draft Permit even as late as September 21, 2009, to further reduce the costs for the Co-Permittees.

DATA ANALYSIS

At the July 22, 2009 public meeting, the Regional Water Board also requested that staff provide analysis of the monitoring data that the Co-Permittees have provided in their Annual Reports. The analysis has not been completed. Staff will provide additional information to the Regional Water Board at the October 1, 2009 public hearing.

PRELIMINARY STAFF RECOMMENDATION:

The draft Order was written with U.S.EPA guidance and unprecedented Co-Permittee and public participation. Staff believes compliance with the draft Order constitutes MEP.

Regional Water Board staff recommends adopting the draft Order as proposed.

ATTACHMENTS

This EOSR includes the following attachments:

1. EOSR for the July 22, 2009 public meeting
2. Modifications made to the second draft Permit, Fact Sheet, and Monitoring and Reporting Program
3. Draft Fact Sheet
4. Final Draft Permit: with permit attachments A-F
5. Draft Monitoring and Reporting Program
6. Responses to Comments Received on the second draft Permit
7. Comments Received on the second draft Permit
8. Cost Estimates