



April 10, 2008

Roger W. Briggs
Executive Officer
California Regional Water Quality Control Board
Central Coast Region
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401-7906

Subject: City of Lompoc's Storm Water Management Program

Dear Mr. Briggs:

On April 2, 2008, the City of Lompoc (City) sent a letter to you requesting additional time to revise the City's Storm Water Management Program (SWMP) because of new proposed requirements you conveyed in correspondence dated February 15, 2008 (February Letter). We have been subsequently advised by staff at the Central Coast Regional Water Quality Control Board (Regional Board) that it is unlikely a time extension will be granted. Thus, we understand that we are to submit a revised SWMP to the Regional Board, no later than 5:00 p.m. on Friday, April 11, 2008. The City hereby submits a revised SWMP.

The revised SWMP enclosed here complies with the State's General NPDES Permit for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems (General Permit). As proposed, the SWMP reduces the discharge of pollutants from the City's municipal separate storm sewer system (MS4) to the maximum extent practicable (MEP). The SWMP includes descriptions of best management practices (BMPs) and measurable goals for the six control measures required by the General Permit. It also includes, to the extent appropriate, BMPs to achieve the conditions specified in the February Letter: maximize infiltration of clean storm water, and minimize runoff volume and rate; protect riparian areas, wetlands, and their buffer zones; minimize pollutant loading; and, provide long-term watershed protection. The BMPs proposed by the City for these conditions are appropriate and applicable to Lompoc. We have not included BMPs that mirror those identified in the February Letter to the extent that they are inappropriate and/or not applicable to the City.

In this regard, the City has major concerns with many of the provisions put forward in the February Letter because they exceed requirements contained in the General Permit, exceed the federal requirement to control pollutants to the MEP, and go well beyond federal regulatory requirements for small MS4s. Our concerns with these provisions are explained further below.

I. The Proposed Requirements Exceed those Necessary to Comply with the General Permit.

The February Letter includes a number of specific requirements that are not identified in the General Permit. For example, Regional Board staff expect SWMPs to present a schedule for development and adoption of hydromodification control standards. (February Letter at p. 4.) In the interim, staff intends to recommend that prescriptive interim requirements be adopted with the SWMP by the Regional Board. (*Id.*) The interim requirements would apply until hydromodification control standards are developed and adopted by the City that are acceptable to Regional Board staff. The interim requirements would include: limiting the Effective Impervious Area (EIA) to less than 5 percent (5%) of the total project area for all new and re-development projects; requiring post-construction run-off hydrographs to match within one percent (1%) pre-construction run-off hydrographs for new or re-development projects that create and/or replace 5,000 square feet or more of impervious surface; and, requiring preservation of pre-construction drainage density for all drainage areas serving a first order stream or larger for projects where the disturbed project area exceeds two acres. (*Id.*) The February letter would also require the SWMP to include BMPs and/or other control measures to establish and maintain minimum 30-foot buffer zones for riparian areas and wetlands, minimize pollutant loading (including volume- and/or flow-based treatment criteria), and include watershed based hydromodification management plans that incorporate low impact development (LID) strategies with a goal of post construction storm water management to achieve an EIA of no more than three to ten percent (3-10%) of watershed area in the City's jurisdiction. (February Letter at p. 5.)

These conditions specified for approval of the SWMP are not part of the General Permit. The General Permit requires small MS4s to "maintain, implement, and enforce an effective SWMP designed to reduce the discharge of pollutants from the regulated small MS4 to the MEP and to protect water quality." (General Permit at p. 8.) The SWMP must also describe BMPs that fulfill requirements of the six minimum control measures required by federal regulations. (General Permit at pp. 8-12; 40 C.F.R. § 122.34.) The conditions expressed by Regional Board staff in the February Letter are not part of the six minimum control measures. (See General Permit at pp. 8-12 [description of the control measures and corresponding requirements].) Furthermore, as discussed more fully below, the conditions exceed MEP. Thus, the additional requirements exceed those established by the General Permit. Compliance with them is not necessary to obtain coverage under the General Permit. Further, imposition of the requirements would create unreasonable obligations not consistent with state law.

II. The Proposed Requirements Exceed the Standard of Reducing Pollutants from Small MS4s to the MEP.

The MEP standard is described by the General Permit as "ever-evolving, flexible, and advancing concept, which considers technical and economic feasibility." (General Permit at p. 4.) MEP should also be applied "in a site-specific, flexible manner, taking into account

cost considerations as well as water quality effects.” (64 Fed. Reg. 68732.) The Regional Board's proposed requirements exceed MEP because they impose specific numeric standards (e.g., EIA <5% and minimum 30-foot buffer zones) that do not take into account economic feasibility and site-specific considerations or allow for local flexibility.

Lompoc is a small community on flat alluvial soils. These sandy soils allow for significant percolation of rainfall. In addition, Lompoc gets relatively little rain, with an average of 15-16 inches per year. Most of the rain falls in one or two large storms. Significant erosion is not anticipated and much of the rain that falls is captured in basins and channels, evaporates or percolates directly into the soil. An unintended result of these requirements could well be the elimination of seasonal streams in arid areas such as Lompoc, jeopardizing the continued existence of special status species dependent on the small amount of water available during the year.

For Lompoc, the numeric hydromodification and LID control standards are not practicable because Lompoc is a built-out community. Requiring a hydromodification management plan with a goal of an Effective Impervious Area of 3%-10% is not appropriate for this community, as there is very little vacant land, parcels are existing and lot sizes are small, with most lots already developed. The City does not have, and cannot create, a legal means by which it can require property owners to rebuild existing legal improvements to meet this goal.

Limiting new commercial and industrial development and redevelopment to an Effective Impervious Area of 5%, serves as an unreasonable burden on both the business owners and the City. This requirement is expected to significantly increase the cost of development or make development on small infill lots economically infeasible. As described in the City's SWMP, with the existing few small lots that comprise the developable commercial or industrial property in Lompoc, providing adequate ingress, egress and parking, in addition to a workable commercial or industrial space, is very difficult without adding significant requirements for landscaped berms and pervious area. Maintaining pervious pavement is expected to be difficult when commercial weight trucks are making deliveries and transporting goods to and from a commercial or industrial site. In addition, on many commercial sites, the pavement forms a barrier and a second line of defense in keeping spills of toxic materials out of the ground and groundwater. Permeable pavement would result in an increase in spills reaching the soil and groundwater tables below, as they could no longer be contained with absorbent barriers on pavement for clean-up.

Imposing these largely untried BMPs on small jurisdictions such as Lompoc puts a significant economic burden on this small community. The burden will be felt not only in the cost of administering difficult requirements that lack clear interpretation, but also in the potential for loss of commercial and industrial tax base, as business owners find it too difficult to comply with the Regional Board's requirements for developing vacant land or remodeling an existing business to suit their needs. Affordable housing, which is so important to the

sustaining local economies is expected to become unattainable as the cost of development consistent with the Regional Boards vision rises beyond that which is economically feasible.

The BMPs proposed in the Regional Board staff's February 15, 2008 letter would impose specific numeric standards on the City's discretionary actions. The source and reasons for the specific BMPs and associated numeric standards are unknown. Regardless, the requirements on their face exceed MEP because they are not flexible nor are they site-specific. For example, the February Letter, and the newly identified requirements, was sent to 35 entities within the Central Coast Regional Board's jurisdiction awaiting coverage under the General Permit. (See Table 1 in February Letter at p. 2.) The entities subject to the letter and its requirements include small municipalities of varying sizes from Gilroy in the north, to Carpinteria in the south, and several universities located in the Central Coast. Clearly, a letter of broad distribution such as this one does not consider technical feasibility, site-specific conditions or cost considerations. Thus, the requirements are not MEP.

Particularly given that the proposed requirements from the February Letter exceed those of the General Permit and MEP, the Regional Board must consider the public interest factors contained in Water Code section 13241. (Wat. Code, § 13263; *City of Burbank v. State Water Resources Control Board* (2005) 35 Cal.4th 613, 627.) Section 13241 requires consideration of economics, site-specific conditions, the need to develop housing in the region, and other factors. The Regional Board must consider and balance such factors to determine if the requirements are reasonable. (Wat. Code, §§ 13241, 13263.) Thus, the Regional Board must consider the public interest factors as contained in Water Code section 13241 before imposing such requirements as part of the City's SWMP. To our knowledge, the Regional Board has not considered such factors relative to matters identified in the February Letter, nor is this anticipated to occur prior to Regional Board action.

III. The Proposed Requirements Exceed Federal Regulatory Requirements for Small MS4s and Requirements Imposed on Large Municipal MS4s.

When Congress amended the Clean Water Act (CWA) in 1987 and required NPDES permits for storm water, Congress specifically distinguished between large and small municipalities. (33 U.S.C. § 1342(p)(6).) The United States Environmental Protection Agency (EPA) continues to stress this distinction in guidance where EPA "strongly recommends" that "no additional requirements beyond the minimum control measures be imposed on regulated small MS4s without the agreement of the operator of the affected small MS4, except where an approved TMDL or equivalent analysis provides adequate information to develop more specific measures to protect water quality." (40 C.F.R. § 122.34(e)(2).) EPA intends for the six minimum control measures to remain the regulatory basis for small MS4s until EPA evaluates the storm water program for phase II communities (which is not set to occur before the year 2012). (40 C.F.R. § 122.37.)

EPA's approach for regulating small MS4s has been endorsed by the State through its adoption of the General Permit. In fact, the "Fact Sheet" for the General Permit states,

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[i]t is understood that storm water quality programs and regulations are new to the entities that will be regulated under this General Permit. Therefore it is anticipated that this General Permit term serve as a "ramping-up" period and that programs implemented by Phase II communities will not necessarily conform to programs implemented by Phase I communities.

(Fact Sheet to General Permit at p. 9.) However, the February Letter includes requirements that go well beyond the six minimum control measures required by federal regulation and the State's General Permit for small MS4s.

Further, the requirements exceed those currently imposed on large MS4s. At most, some of the requirements are being evaluated by the Los Angeles Regional Board for the MS4 permit for Ventura County (e.g., requiring EIA for development and re-development to be <5% of the total project area). However, at this time, the requirements are the subject of great discussion and have not been adopted as proposed in the Ventura County MS4 permit.

The requirements also precede the State Water Board's generation of a revised General Permit for small MS4s. The State Water Board is in the process of developing a new General Permit for small MS4s that may include some requirements related to hydromodification controls and LID. Until such time as the revised General Permit is advanced, it is premature to impose the February Letter requirements on Lompoc.

In summary, the Regional Board should evaluate the City's SWMP to determine if it complies with the General Permit. The proposals in the February Letter exceed state and federal requirements for small MS4s. Moreover, as a general policy matter, the mandates are being applied prematurely as they have not even been applied to large MS4s, and precede the State Water Board's development of a new General Order for small MS4s.

As mentioned previously, the City has revised the SWMP to address some of the provisions identified in the February Letter. The enclosed SWMP complies with the General Permit for small MS4s. However, the City does not support the application of other requirements in the SWMP. Where such requirements are not appropriate, the SWMP has not been revised. Should you or your staff have any questions regarding the SWMP, please contact Stacy Lawson at 805-875-8275.

Sincerely,



Dick DeWees, Mayor
City of Lompoc

Encl.