

Memorandum

Date: August 30, 2007
To: Board of Supervisors
From: Scott McGolpin, Interim Public Works Director
Subject: Summary and Discussion of Comments Received on Storm Water Discharge Ordinance
CC: John Torell, CEO Office



Summary and Discussion of Comments Received on Storm Water Discharge Ordinance (Chapter 29)
First Reading: August 21, 2007, continued to Sept 11, 2007

14 comments were received at the first reading of the Discharge Ordinance hearing of August 17. Staff has reviewed the comments and prepared the analysis and recommendations below. Specific recommendations of changes to the proposed Ordinance are contained in Appendix A.

<u>Comment</u>	<u>Staff Recommendation</u>
1	No revision
2	No revision
3	No revision
4	Revise
5	No revision
6	No revision
7	No revision
8	Revise
9	Revise
10	Revise
11	Revise
12	Revise
13	Revise
14	Revise

As you recall, staff has held numerous workshops and coordinated with many groups since this process was started in 2004. We have received literally hundreds of suggestions and the Ordinance reflects many of them. We deeply appreciate the

community effort and believe the staff recommendations balance the various interests that have participated.

► **Comment #1:** When the County discovers a pollution source that needs to be controlled, the Ordinance allows the Public Works Director to identify and require those control measures, or Best Management Practices, "*as may be appropriate* to minimize... pollutants" be put in place. One Commenter believes "as may be appropriate" is not strong enough and recommends to replace with "to prevent further discharge"

The ordinance language in this section relates to both selecting an appropriate control measure and controlling pollutants, not discharges. The ordinance is written to control pollution not eliminate all discharges. Staff believes it is appropriate for the Director to identify and require Best Management Practices that are "appropriate to minimize" pollutants, and recommends no change to the Ordinance to address this comment.

Furthermore, other parts of the commenter's proposed text would put the County in the position of enforcing BMP requirements promulgated by state or federal agencies. Since we can foresee circumstances where BMPs developed and adopted by other agencies might not be the "best fit" for local circumstances, staff recommends no change to the ordinance to address this comment.

► **Comment #2:** When the County considers imposing a BMP to control pollution, the Ordinance would allow the county to consider the economic feasibility of the measure. One Commenter objects to cost being a limiting factor in selecting Best Management Practices.

Both technical and economic feasibility are the usual standards for control measures, for example the State considers both when determining which Best Management Practices are appropriate in any given situation. This does not mean that a polluted discharge may continue because protective measures are too costly to implement. That would be in violation of Sec 29-47 of this ordinance. Staff recommends no change to the Ordinance to address this comment.

► **Comment #3** the ordinance is written to control pollution not eliminate all discharges. Other regulations such as those pertaining to Public Health, Land Use and Hazardous materials are not changed and are left the main means of control in those areas. One Commenter requests land use issues be made part of this Ordinance.

Permitting and review of new and redevelopment has been left out of this Discharge Ordinance and should be addressed separately with Planning & Development Department through the General Plan and Zoning Ordinance. Staff recommends no change to the Ordinance to address this comment.

► **Comment #4** the proposed ordinance allows the County to take abatement action on violations under appeal, but provides up to 30 days for the County to take that abatement action. The wording does not prevent the County from taking that action more quickly if

needed. One commenter stated that 30 days was too long to wait for a clean up. Members of the Board stated similar concerns.

Staff recognizes that the wording does not appear consistent with the intent of this ordinance, which is to control any polluted discharge. Staff recommends to eliminate this time frame altogether. Eliminating the 30 day time will not change the County's ability to act quickly if a pollution source is serious.

► **Comment #5** the proposed ordinance applies to “all discharges entering the storm drain system” because most discharges may carry pollution. The Ordinance does contain exceptions (such as some discharges that are clearly non-polluting and discharges allowed under other permits). One commenter does not think the Ordinance needs to apply to all discharges and has requested that the Ordinance apply only to “polluted discharges entering the storm drain.”

Changing the wording as suggested would make the Ordinance not comply with the NDPEs General Permit because of the requirement that all discharges to the Storm drainage system need to be controlled. Therefore staff recommends no revisions to the Ordinance.

► **Comment #6.** The ordinance allows the County to identify BMPs to control pollution but does not guarantee that the BMP will work. One commenter pointed out the use of “safe haven” agreements in other resource protection areas (such as endangered species). The Commenter proposed language that would protect property owners who implement County-approved BMPs from further action under the Ordinance.

How any particular BMP is built and maintained control how well pollution s removed and these factors are outside the County's control. Therefore staff recommends no revisions to the Ordinance.

► **Comment #7.** The Homebuilders Association of Central Coast wishes to work with Public Works to identify appropriate BMPs. Staff welcomes their ongoing involvement.

► **Comment #8.** . The proposed ordinance requires every responsible party owning property through which an element of the storm drain system passes, to keep and maintain that part of the storm drain system within their property such that no discharge of pollutants will occur into the publicly-owned storm drain system. The issue is that a property owner who is not causing any pollution to discharge into the storm drain from his or her property could be held responsible for pollution that originates from another upstream property.

One commenter requested to revise the ordinance to clearly specify that a land owner is only responsible for what happens on their property. This is the intention of the ordinance, therefore staff proposes to amend the ordinance to clarify that the responsibility for upkeep only applies to the discharges “from their property”.

► **Comment #9.** This same paragraph addressing responsibility of property owners to maintain the storm drain system on their property also states that “no discharge of pollutants will occur into the publicly-owned storm drain system.” One commenter believes that some discharges of pollution should be allowed as long as the property owner takes steps to prevent such a discharge and that “no discharge of pollutants” language should be revised in the Ordinance.

Staff recognizes that in cases where the storm drain system crosses a private property, the requirement for owner to maintain the storm drain system such that there are “no discharge of pollutants” may be not be possible (for example runoff from public streets, air-born deposits, etc.).

Staff proposes the ordinance be amended to clarify that such discharges will be prevented instead of allowing no discharges. This will not diminish the scope (Sec 29-42) or prohibitions (Sec 29-47) established elsewhere in the ordinance

In addition, staff recommends that the definition of “Pollution” be modified to exclude seepage of Petroleum to clarify that the County does not seek to regulate the numerous seeps that occur in the region. Again, this will not diminish the scope (Sec 29-42) or prohibitions (Sec 29-47) established elsewhere in the ordinance

Comments 10-14 were received during the August 21, 2007 hearing.

► **Comment #10 (Andy Caldwell).** The proposed ordinance applies to all discharges entering the storm drain system, but does not apply to agricultural discharges regulated by the SWRCB. The issue raised during the hearing is whether it would be necessary for agricultural dischargers to provide “Proof of waiver or exemption” to the Public Works Director upon request.” One commenter requested this requirement be eliminated.

Since Staff agrees that proof of waiver can be verified by the state should the County need confirmation, we suggest this requirement can be deleted without compromising the Ordinance.

► **Comment #11 (Andy Caldwell).** The proposed ordinance requires parties responsible for releases of hazardous and non-hazardous spills to notify the Public Works Department. One commenter questioned whether this reporting was necessary in all cases, and requested deletion of notification requirement.

Based on staff review of this issue, non-hazardous materials aren’t defined in the Ordinance and the current language could be misconstrued as applying to non-polluted discharge such as individual residential car washing. Staff suggests that it is unnecessary to introduce a new term in the ordinance, since “pollutant” is already defined. In order to

meet the intention that polluted discharges be brought to the attention of the county, staff recommends deleting “non-hazardous material” and replacing with “pollutant” for clarity.

► **Issue #12: Timeline for Enforcement (Supervisor Carbajal).**

The proposed ordinance provides for the Public Works Director to order an immediate halt to a discharge, or if such discharge is not causing serious harm, to allow for abatement within an unspecified time. Members of the Board had concerns that such a discharge under the proposed ordinance could carry on for say a year, and therefore through neglect or inaction the discharge could remain polluted for a long time.

While it is not the Staff’s intent to allow such an event to occur, we felt that it could be clarified such that the timeline would be restricted to 7 days. This is reasonable in that if it is a serious pollution issue, the Public Works Director will order the immediate abatement, or if it is a is not a severe or threatening issue, the Public Works Director have the latitude to give reasonable time to abate the problem.

Note that in any case, if there is a serious issue, the Public Works Department has the authority to enter a property and abate the source through direct action. Such an action would be used in only the most serious issues or in the case of a totally non-responsive property owner.

► **Comment #13 (Supervisor Carbajal).** The proposed ordinance includes an opportunity for parties to appeal their Notice of Violation. Supervisor Carbajal requested clarification that such appeal be provided in writing. Staff agrees that requiring an appeal to be in writing improves the effectiveness of the Ordinance and recommends a revision to require written appeals.

► **Comment #14 (Supervisor Wolf).** This comment is the same as #12 above, in that the time frame required to discontinue an illegal discharge needs more “teeth”. Supervisor Wolf felt it not unreasonable to establish a minimum time-frame for abatement of a polluted discharge. These concerns are addressed in the revisions described in #12 above.