

Memorandum

Date: August 30, 2007
To: Scott McGolpin, Interim Public Works Director
From: Tom Fayram, Deputy Director, Water Resources Division
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 makes the specific recommendations of changes to the proposed Ordinance in the attached Memorandum from the Public works Department, Water Resources Division..

TECHNICAL DISCUSSION AND PROPOSED CHANGES

► **Comment #1: Require Compliance with State/Federal BMPs** The Ordinance requires the Public Works Director to identify those Best Management Practices requirements "*as may be appropriate to minimize...*" the discharge of pollutants. The concern was expressed that property owners should be required to comply with Best Management Practices promulgated by any federal, State of California, or regional agency (see Channelkeeper comment letter for complete details).

The proposed text would also put the County in the position of requiring BMP requirements adopted by state or federal agencies. Staff recommends that the County should require Best Management Practices that it believes appropriate in each particular case. Staff recommends no change to the Ordinance to address this comment.

► **Comment #2: Cost as a BMP Limiting Factor** The ordinance provides that fiscal factors be considered in selection of Best Management Practices to abate identified pollution sources. One commenter suggests that fiscal factors should not be considered in the selection of BMPs. The consideration of fiscal factors is well established in the selection of BMPs, for example the State considers both cost and technical feasibility 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 state law and Sec 29-47 of this ordinance. Staff recommends no change to the Ordinance to address this comment.

► **Comment #3: New Development Permitting** and review of new and redevelopment is not included in this Discharge Ordinance. One commenter suggested adding elements of the land use process to the Ordinance. Staff believes land use should be addressed separately with the Planning & Development Department and through the existing land use process. Staff recommends no change to the Ordinance to address this comment.

► **Comment #4: Abatement Under Appeal** 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. Staff recognizes that the wording does not appear consistent with the intent of this ordinance, which is to abate 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. Proposed changes are shown below.

Sec 29-54. Appeal of Notice of Violation

~~Notwithstanding~~ Subject to the provisions of Section 29-57, (Urgency Abatement), any responsible party receiving a Notice of Violation may appeal the determination of the Santa Barbara County Public Works Department. The filing of a Notice of Appeal shall not preclude the abatement by the Department of any discharge or nuisance. In order to appeal a determination, the responsible party must file a written Notice of Appeal which must be received by the Department. ~~The Director of Public Works must receive the Notice of Appeal~~ within 10 business days from the date on the Notice of Violation. Postmarks are not accepted in lieu of actual delivery. Hearing on the appeal before the Director of Public Works shall take place within 15 days from the date of receipt of the notice of appeal. A written decision of the Director of Public Works shall be issued within 30 days after the hearing, and shall be considered a "final administrative order" within the meaning of California Civil Code section 1094.5.

Sec 29-55. Enforcement Measures After Appeal

If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, ~~or, in the event of an appeal, within 30 days of the decision of the Director of Public Works upholding the decision of the Santa Barbara County Public Works Department,~~ then representatives of the Santa Barbara County Public Works Department shall be authorized to enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any responsible party responsible party to refuse to allow the Santa Barbara County Public Works Department or designated contractor to enter upon the premises for the purposes set forth above.

Sec 29-57. Urgency Abatement

(a) The Director of Public Works is authorized to require immediate abatement of any violation of this article that, within the sole discretion of the Director, is found to constitute an immediate imminent threat to the health, safety or well-being of the public. If any such violation is not abated immediately as directed by the Santa Barbara County Public Works Department, said agency is authorized to enter onto private property and to take any and all measures required to remediate the violation.

(b) Subject to appeal pursuant to Section 29-54, any cost or expense related to incurred as the result of such remediation undertaken by the County of Santa Barbara shall be fully reimbursed by the property owner and/or responsible party. The County may bring an action for recovery of such costs and expenses in the Superior Court. Any relief obtained under this section shall not prevent the Director of Public Works from seeking other and further relief or remedies authorized under this article or other applicable law.

► **Comment #5: Limit Scope of Ordinance** The proposed ordinance applies to “all discharges entering the storm drain system” because the intent of the ordinance is to prevent the discharge of pollutants that may be in any discharges to the storm drain system with certain exceptions (e.g., permitted agricultural discharges, non-polluting, otherwise permitted, etc.). 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 not comply with the NDPES General Permit requirements which apply to all discharges from the County’s municipal separate storm sewer system. Staff recommends no change to the Ordinance to address this comment.

However, staff suggests substituting the word “pollution” for the term “pollutants” to clarify meaning and be consistent with the use of the defined term “pollution” in section 29.47 (b)(4)

29.47 (b)(4):

The Director of Public Works may exempt in writing other non-storm water discharge that are demonstrated not to be a sources of ~~pollutants~~ pollution to the storm drain system.

► **Comment #6: Provide “Safe Harbor” Clause for Property Owners.** The proposed language would protect property owners who implement County-approved BMPs from further action under the Ordinance.

The County cannot assume responsibility for the effectiveness of the property owner’s BMPs. For example, the property owner might install or implement a BMP in a manner that is not particularly effective or may not provide the ongoing maintenance necessary to keep them functioning. Staff recommends no change to the Ordinance to address this comment.

► **Comment #7: Work Together on Recommended BMPs.** The ordinance requires the Public Works Director to adopt requirements identifying appropriate Best Management Practices appropriate to minimize the generation, transport, and discharge of pollutants. The Homebuilders Association of Central Coast supports having the Public Works Director identify appropriate Best Management Practices and would like to work with

Public Works to help identify those practices to make sure they are the most technically and fiscally feasible. Staff welcomes their continued involvement.

► **Comment #8: Limit Property Owner Liability.** Staff agrees that a property owner should not be held liable under the Ordinance for polluted discharges into the publicly-owned storm drain that originates from another property. In other words, a land owner can only be responsible for what happens on their property. Staff recommends that the Ordinance be revised to include the words “from their property” to better clarify the intent of discharge prohibitions.

Sec 29-51. Storm Drain System Protection and Remediation.

(a) Requirement to Maintain Storm Drain System

Every responsible party owning property through which an element of the storm drain system passes, or such responsible party's lessee, shall 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 from their property.

► **Comment #9: Maintenance of Property.** Staff agrees 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 unattainable for some properties (i.e., upstream pollutants, runoff from public streets, air-born deposits, etc.).

Revising the ordinance to clarify that such discharges shall be prevented instead of allowing no discharges does not diminish the scope (Sec 29-42) or prohibitions (Sec 29-47) established.

Sec 29-51. Storm Drain System Protection and Remediation.

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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. Revising the ordinance to clarify that such discharges from petroleum seeps are excluded does not diminish the scope (Sec 29-42) or prohibitions (Sec 29-47) established.

Sec 29-41. Definitions.

For the purposes of this article, the following words shall be defined as follows:...

Pollutant

All those “pollutants” defined in Section 502(6) of the federal Clean Water Act (33 U.S.C. Section 1362(6), or California Water Code Section 13373. “Pollutant” includes anything that causes or substantially contributes to pollution. Examples of pollutants include, but are not limited to the following:

1. Commercial and industrial waste (such as paints, varnishes, detergents, plastic pellets, hazardous substances, fertilizers, pesticides, slag, ash and sludge);
2. Metals, dissolved and particulate metals, such as cadmium, lead, zinc, copper, silver, nickel, chromium, and nonmetals such as phosphorus and arsenic;
3. Petroleum hydrocarbons (such as fuels, lubricants, surfactants, oils, solvents, coolants, grease and other automotive fluids); except for naturally occurring petroleum seeping to the surface;
4. Excessive eroded soils,

► **Comment #10: Proof of Exemption for Ag (from 8/21 Hearing, Andy Caldwell).** Staff agrees that the requirement for “proof of waiver or exemption...” where agricultural discharges are regulated by the State Water Resources Control Board can be deleted without compromising the Ordinance. Agricultural discharges are regulated by the State and therefore the State could be contacted for waivers or exemptions granted for agricultural discharges should the County so desire.

Sec 29-42. Applicability.

This article shall apply to all discharges entering the storm drain system generated on any developed and/or undeveloped lands lying within the unincorporated area of the county.

Agricultural discharges are regulated by State Water Resources Control Board (SWRCB) and/or Regional Water Quality Control Board (RWQCB) pursuant to waiver and/or formal policy and therefore are exempt from this article provided compliance with all relevant permit, waiver or policy conditions established by the SWRCB or RWQCB are maintained to the satisfaction of SWRCB or RWQCB. ~~Proof of waiver or exemption shall be furnished to the Public Works Director upon request.~~

In the event that any section of this article conflicts with any County or other enforceable standard for discharges, the more stringent standard shall apply.

► **Comment #11: Notification of Spill of Non-Hazardous Material (from 8/21 Hearing, Andy Caldwell).** The proposed Ordinance requires the County be notified in the event of a “non-hazardous materials” spill of materials, as opposed to a “hazardous material” spill. One commenter points out that the proposed Ordinance does not provide a definition of “non-hazardous materials” which could be misconstrued as including exempt discharges such as individual residential car washing.

Staff believes the intent of this provision is to provide County notice in the case of a polluted spill, where the definition is provided in the Ordinance. Therefore, it improves the intent and clarity to revise the Ordinance to require notification not from “non-hazardous” but instead from “polluted” spills.

Sec 29-52. Notification of Spills.

(a) In addition to other requirements of law, as soon as any responsible party responsible for property, a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into storm water or the storm drain system, said responsible party shall take all necessary steps to ensure the discovery, containment, and cleanup of such release.

(b) In the event of such a release of hazardous materials said responsible party shall immediately notify emergency response agencies of the occurrence via emergency dispatch services.

(c) In the event of a release of non-hazardous ~~materials~~ pollutants, said responsible party shall notify the Santa Barbara County Public Works Department in responsible party or by phone or facsimile no later than the next business day.

(d) If the discharge of ~~materials~~ pollutants emanates from a commercial or industrial establishment, the responsible party shall also retain an on-site written record of the discharge, clean up, and remediation, and the actions taken to prevent its recurrence. Such records shall be retained and available for review by the Director of Public Works for at least three years.

► Comment #12: Timeline for Enforcement (from 8/21 Hearing, 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 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 that 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.

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(b) Requirement to Remediate

Whenever the Public Works Director finds that a discharge of pollutants is taking place or has occurred which will result in or has resulted in pollution of entering the storm drain system, the Public Works Director may require by written notice of violation, as provided by this article, to the owner of the property and/or the responsible party that the illegal discharge be discontinued immediately, or by a specified date but no less than 7 days, and if necessary, take measures to eliminate the source of the discharge to prevent the occurrence of future illegal discharges and restore the affected property within a specified time pursuant to the provisions of this article.

► **Comment #13: Require Appeal in Writing (from 8/21 Hearing Supervisor Carbajal).**

Staff agrees that requiring an appeal to be in writing improves the intent of the Ordinance.

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► **Issue #14: Timeline for Enforcement (from 8/21 Hearing Supervisor Wolf).** See Issue #12 above.