

**Item Number 5**

**ITEM SUMMARY**

**Public Workshop to Receive Comments on the  
Second draft Ventura County Municipal Separate Storm Sewer System (MS4) Permit  
August 28, 2007**

**NPDES Permit No. CAS004002**

**Item:** 5

**Subject:** The Proposed Reissuance of Waste Discharge Requirements for Municipal Separate Storm Sewer System Discharges, within the Ventura County Watershed Protection District, County of Ventura and the Incorporated Cities Therein.

**Purpose:** To conduct a 2<sup>nd</sup> Board workshop with the objective of discussing critical issues arising from the draft tentative Ventura County Municipal Separate Storm Sewer System (MS4) NPDES Discharge Permit (first issued in December 2006, 2<sup>nd</sup> draft issued on August 28, 2007). This proposed permit will require the County and Cities in Ventura County to implement best management practices, control pollutants in storm water discharges to the maximum extent practicable, comply with receiving water objectives, and meet waste load allocations in effective TMDLs.

This item is being presented for purposes of discussing the major issues regarding the reissuance of this permit – no formal action is requested from the Board at this meeting.

**Background:** The Ventura County Watershed Protection District (Principal Permittee), County of Ventura, Cities of Camarillo, Fillmore, Moorpark, Ojai, Oxnard, Port Hueneme, San Buenaventura, Santa Paula, Simi Valley and Thousand Oaks (Permittees) have joined together to form the Ventura Countywide Storm Water Quality Management Program to discharge wastes. The Permittees discharge or contribute to discharges of pollutants in storm water from municipal separate storm sewer systems (MS4s), also called storm drain systems, from the associated Watershed Management Areas into of Ventura River, Santa Clara River, Calleguas Creek, Malibu Creek and Miscellaneous Ventura Coastal waters all within Ventura County and Los Angeles County.

**Regulatory History:** Storm water discharges from the Ventura County MS4 are covered under countywide waste discharge requirements contained in Order No. 00-108, adopted by the California Water Quality Control Board, Los Angeles Region (Regional Water Board) on July 27, 2000, which replaced Order No. 94-082, adopted by the Regional Water Board on August 22, 1994. Order No. 00-108 also serves as a National Pollutant Discharge Elimination System (NPDES) permit for the discharge of municipal storm water.

**Current Status:** The existing permit expired on July 27, 2005 and administratively continues to be in effect until a new permit is reissued. The Permittees filed a Report of Waste Discharge (ROWD), dated January 26, 2005. The Regional Water Board reviewed the ROWD and determined it to be partially complete under the reapplication policy for MS4s issued by the United States Environmental Protection Agency. The Regional Water Board has prepared this Order so that implementation of provisions contained in this Order by Permittees will meet the requirements of the federal NPDES regulations at 40 CFR 122.26.

**Second draft Permit:** The first draft Ventura County MS4 permit was issued on December 27, 2006, and a Workshop was held on April 5, 2007, the second draft Ventura County MS4 permit is in response to comments on the first draft permit. The issues/ topics stemming from the April 5<sup>th</sup> Workshop that the Water Board Members requested further discussion on are summarized below. The September 20, 2007, Workshop will be structured in order to discuss these, topic by topic.

- Municipal Action Levels (MALs)/ Maximum Extent Practicable (MEP) Numerical Expression

The December 27, 2006, (the 1<sup>st</sup> draft) of the Ventura County MS4 Permit introduced Municipal Action Levels (MALs) as a numerical expression of the Maximum Extent Practicable (MEP) Requirements of 40 CFR 122.26 (d)(2). The USEPA does not define MEP. Both the 1<sup>st</sup> draft and 2<sup>nd</sup> draft of the Ventura County MS4 Order requires storm water discharged from the MS4 to waters of the U.S. to achieve, at a minimum, a storm water effluent quality for the water quality design storm, equal to the pollutant specific MALs. Typically, compliance with the MEP requirements in MS4 Permits is achieved through the implementation of Best Management Practices (BMPs), but there has been no measurable numeric defining MEP. Municipal Action Levels represent a quantifiable expression of the MEP standard that clearly expresses the standard for expected outcomes. The MALs have been developed for common storm water pollutants based on nationwide Phase I MS4 monitoring data in the National Stormwater Quality Database. The MALs are computed using a statistically based population approach. Regional Board staff, in response to concerns

expressed during the April 5, 2007 Ventura MS4 Workshop, recalculated the MAL values to account for 2 x Coefficient of Variation (COV) instead of 1 x COV. For example; the CTR continuous Copper concentrations for freshwater and saltwater are 2.0 µg/L and 9.3 µg/L respectively. The Copper MAL values in the 1<sup>st</sup> draft and 2<sup>nd</sup> draft are 32.0 µg/L and 70.7 µg/L respectively. Regional Board staff examined the feasibility of using a subset of the national dataset based on the Western Arid climate zone, but found that because of the robustness of the national dataset (MAL values for Copper were based on approximately 3,500 sampling events for the national dataset versus approximately 300 sampling events for the climate zone subset) staff decided to use the national dataset instead of the subset of the national dataset. In addition, several values obtained using the subset were similar or more stringent than those obtained from the national dataset.

- Total Maximum Daily Loads (TMDLs)

At the April 2007 workshop, a concern was expressed that not all adopted TMDL Waste Load Allocations (WLAs) for MS4s were incorporated in the second draft permit. For a TMDL to be deemed effective, all the following steps must have been completed before the TMDL WLA can be incorporated in an NPDES permit:

- (a) Regional Water Board adoption.
- (b) State Water Board approval.
- (c) Office of Administrative Law approval.
- (d) U.S. EPA (Region 9) approval.
- (e) State Resources Agency final fee exemption letter submittal.

Staff has incorporated into the second draft permit the four effective TMDLs within Ventura County that have completed the steps listed above, have an effective date, and have WLAs for MS4s. These include:

- 1) Santa Clara River - Nitrogen Compounds.
- 2) Malibu Creek and Lagoon - Bacteria.
- 3) Toxicity, Chlorpyrifos and Diazinon in the Calleguas Creek, Its Tributaries and Mugu Lagoon.
- 4) Organochlorine (OC) Pesticides, Polychlorinated Biphenyls (PCBs), and Siltation in Calleguas Creek, Its Tributaries and Mugu Lagoon.

TMDL WLAs have been allocated for both wet and dry weather and have been incorporated into this second draft permit. Storm water (wet weather) TMDL WLAs are addressed as water quality-based effluent limits (WQBELs) expressed as numeric effluent limits or, when identified by MS4 Permittees and supported by documentation, as BMPs which have a reasonable expectation of achieving the WLAs.

Non-storm water (dry weather) TMDL WLAs are addressed as WQBELs expressed as numeric effluent limits. The non-storm water (dry weather) discharges are subject to the traditional NPDES permitting provisions under Clean Water Act (CWA) Sections 301 and 402, rather than CWA Section 402(p).

- Grading Restrictions

Soil disturbing activities during construction and demolition exacerbate sediment losses. Sediment is a primary pollutant impacting beneficial uses of watercourses.

Similar to the first draft, the second draft permit restricts grading during the wet season, in high risk areas, viz, construction projects on hillsides with slopes 20% or steeper prior to land disturbance; directly discharging to a CWA § 303 (d) water body listed for siltation or sediment; and /or within or adjacent to an environmentally sensitive area (ESAs).

Grading is prohibited in high risk areas during the wet season. However, the MS4 Permittee may grant a variance if the project proponent can demonstrate that the proposed BMP measures can be reasonably expected to: not cause or contribute to the degradation of water quality; ensure that Total Suspended Solids discharged is 100mg/L or less; ensure that Turbidity of the discharge is 50 NTU or less; not impair beneficial uses; and includes a monitoring program to ensure effectiveness.

- Low Impact Development (LID)

Low Impact Development (LID) measures are innovative land development strategies that seek to preserve the pre-development hydrology and function of the site by reducing post construction storm water runoff volume and pollutant loads. The Water Board Staff in partnership with the Southern California Stormwater Monitoring Coalition (SMC), which includes the County of Ventura, have begun on a project to promote LID strategies in Southern California, provide training, and develop implementation tools. Some parties expressed a concern that LID measures may not be practicable to implement in areas undergoing redevelopment, because of limitations of space, and other considerations such as transportation hubs and affordable housing need. The second draft permit under Permit Part 5 E. IV. 4 provides for an alternative approach in such circumstances. Permittees may develop a Redevelopment Project Area Master Plan, and have it reviewed for multi-purpose objectives including water quality by a state planning agency such as the local government commission, which then makes a recommendation to the Water Board for approval, as a substitute wholly or in part.

- Monitoring

In response to comments received on the first draft, staff has revised the draft permit's monitoring requirements in the following areas:

- 1) Dry weather mass emission monitoring has been eliminated. TMDL non-storm water (dry weather) "end-of-pipe" monitoring has been established that will provide MS4 data specific to each Permittee's jurisdiction and its landuse.
- 2) Total suspended solids (TSS) monitoring has been eliminated. Monitoring for TMDL compliance will provide MS4 data specific to assess the variability of storm water constituents and provide an accurate estimate of mass emissions.
- 3) TMDL compliance monitoring has been modified from receiving water monitoring to "end-of-pipe" monitoring of publicly owned major outfalls. In order to evaluate compliance with the TMDL WLAs, water quality-based effluent limits (WQBELs) are expressed as numerical limits measured at the "end-of-pipe".
- 4) Tributary Monitoring has been eliminated. With the implementation of TMDL "end-of-pipe" monitoring for both non-storm weather (dry weather) and storm water (wet weather), and Municipal Action Levels (MALs) monitoring, staff will be able to directly identify dry and wet weather MS4 discharges causing or contributing to exceedences of water quality objectives..
- 5) Bioassessment Monitoring performed by the MS Permittees alone has been eliminated. Instead, Permittees are required to participate in the Southern California Storm Water Monitoring Coalition (SMC) Southern California Regional Bioassessment Monitoring Program that is currently being developed.
- 6) The Trash and Debris Study has been reduced in scope from eleven areas to two areas. The two areas suggested by Permittees, Channel Island Waterfront and Ormond Wetland/ Lagoon/ Beach, represent areas that are directly affected by the MS4 discharges.
- 7) The Pyrethroid Insecticides Study has been reduced in scope from monitoring three watersheds to only the Calleguas Creek watershed. Through Permittees working with the Watershed Group on a focused Study for two years in the largest urban watershed within Ventura County, we should be significantly informed regarding the extent of the Pyrethroid problem in urban streams.

- Phase I/ II Cities

The six small communities within Ventura County that are Permittees to the Ventura County MS4 Permit requested that they be re-designated as Phase II cities. The Phase II designation is only applicable to MS4 systems that have not already been designated as Phase I. Further, federal regulations state that any municipality that

contributes substantially to the pollutant loadings of a Phase 1 MS4, should be regulated by the Phase 1 program (40 CFR 123.35(b)(4)).

Nevertheless, staff invited these cities to submit a letter outlining their concerns for consideration. The smaller cities submitted a paper explaining that their concerns, viz, 1) BMP substitution for catch basin excluders; 2) decrease in the frequency requirement for meeting attendance; 3) not wanting to provide a monetary contribution to the Statewide Environmental Education Account; modify program timelines; 4) exemption from special studies, electronic tracking requirements, and participating in public construction activities management program.

Staff revised the Meetings attendance requirement to be discretionary, The BMP substitution request may be submitted under Part 5 A.2. The contribution to the State Environmental Education Fund is an option. Sharing of Program costs for special studies, and other elements may be worked out with the Principal Permittee and other Permittees.

- Trash Excluders

In the December 27, 2007 draft permit, staff included a provision for installation of trash excluders at all catch basin inlets in the County of Ventura to prevent trash from entering the system and being discharged. The August 28, 2007 draft permit, limits the installation of trash excluders, or equivalent devices on catch basins to prevent the discharge of trash to the storm drain system, to areas subject to high trash generation, i.e., commercial areas, industrial areas, and near educational institutions. The Permit allows for site-specific Best Management Practice (BMP) substitution if a Permittee wants to consider an alternative approach to the trash excluder (see Part 5 A.2) .

- 100,000 Gallon Flushing Limitation

MS4 Permittees are required to effectively prohibit non-storm water discharges to the storm drain system. In the December 27, 2007 draft permit, a threshold was included (100,000 gallons of potable water in a year) for potable discharges above-which coverage under a separate NPDES Permit would be required. Staff met with water purveyors and with the State of California Department of Health Services (CA DHS- which regulates drinking water) and tentatively decided that a separate NPDES permit for potable water discharges with specific requirements that will recognize CA DHS requirements for flushing, require notification to cities, and require the implementation of BMPs during discharges is needed.

- Short Time Frames

Staff has evaluated the "Time Schedules for Permit Implementation" paper submitted by the Permittees at the June 13, 2007 meeting and have extended time schedules equitably between 6 months and 1 year.

- Atmospheric Deposition

Atmospheric deposition is caused by human activity both local and regional, and is recognized in many areas as an important contributor to pollutant loads. In the last decade, there has been legislation explicitly to address atmospheric deposition. When the Clean Air Act (CAA) was amended in 1990, Congress added requirements that the U.S. EPA assess the impact of atmospheric deposition of toxic air emissions (and other air pollutants of concern) on certain water bodies collectively known as the Great Waters. U.S. EPA's current guidance also specifies that states should include water bodies with atmospheric sources of pollution on their lists of impaired waters that require TMDLs. Water quality problems in a water body can result from particular pollutants, so air deposition has to be considered as a possible contributor of those pollutants. By implementing proper BMPs, and better site design these pollutants can be mitigated or reduced.

- California Water Code Section 13421 Considerations

The authority exercised under this Order is not reserved state authority under the Clean Water Act's savings clause (cf. *Burbank v. State Water Resources Control Bd.* (2005) 35 Cal.4th 613, 627-628 [relying on 33 U.S.C. § 1370, which allows a state to develop requirements which are not "less stringent" than federal requirements]), but instead, is part of a federal mandate to develop pollutant reduction requirements for municipal separate storm sewer systems. To this extent, it is entirely federal authority that forms the legal basis to establish the permit provisions. Thus, considerations of the provisions of the California Water Code Section 13421 – "past, present, and probable future beneficial uses of water; economic considerations; the need for developing housing within the region; and the need to develop and use recycled water" - are not required. Nevertheless, in response to requests by stakeholders staff has evaluated these considerations and will include the analyses in the technical papers that are being written (End-of-Pipe Numeric Limits for Dry Weather; Grading Restrictions and Performance; Hydromodification; Low Impact Development (LID); Municipal Action Levels (MALs); and Performance Standards for Infill Development). These papers will be released with the fax sheet prior to the adoption hearing.

- Standardized/ Uniform Cost Reporting

Federal guidance for implementing the municipal storm water program includes a requirement for a fiscal analysis of necessary capital, and operations and maintenance expenditures which includes a description of financial budget and resources for the entire storm water program.

Staff has structured the budget reporting for uniform consistency. Current variability in the organization and content of cost reporting data submitted by the cities indicates standards for reporting costs and storm water activities are needed to allow accurate cost comparisons to be made between storm water activities. This cost information is crucial in making management decisions regarding which storm water activities should be implemented.

It is recommended that the Permittees establish a separate storm water fund to account for storm water related expenditures. Cities would be able to use this fund for storm water related expenditures needed for annual storm water report preparation. It is important that the fund distinguish between storm water permit compliance costs and storm water conveyance costs. Having a fund in place also means that the costs reported in the fund would be subject to independent audit on a yearly basis, which would increase the level of confidence in reported cost figures. Storm water costs should be further broken down into storm water programs. For all programs, there are several costs that should be tracked for each cost category.

Uniform Cost Reporting is best addressed through a statewide or nationwide program where the cost reporting process needs to include notifying cities of reporting goals, receiving feedback and data from the cities, reviewing reported costs for quality and consistency, and providing feedback to the cities.

- Limited Liability Companies (LLC)

Staff inadvertently omitted LLCs under the signatory requirements and will correct the error in the tentative permit.

**Summary of Recent Developments:**

Under the direction of the Regional Water Board at the April 5, 2007 Workshop, staff was directed to hold scoping meetings on the draft Permit. The Regional Water Board staff has conducted 18 scoping meetings from February 9, 2007 through July 17, 2007, with Permittees their representatives, and various Stakeholders (Los Angeles County DWP, Los Angeles City; City of Los Angeles EMD, Los Angeles County-SD, City of Downey, Collation for Practical Regulation (CPR), County of Orange, Heal The Bay; Natural Resources Defense Council



(NRDC), California State Dept. of Health Services, Building Industry Association of Southern California/Greater Los Angeles Ventura Chapter (BIAGLA/VC), Construction Industry Coalition on Water Quality (CICWQ), Geosyntec Consultants, Metropolitan Water District, Calleguas Water District, California Stormwater Quality Association (CASQA), Southern California Coastal Water Research Project, Santa Monica Bay Restoration Commission). On April 5, 2007 and September 20, 2007 the Regional Water Board conducted workshops to discuss drafts of the NPDES Order and received input from the Permittees and the public regarding proposed changes

The second draft Permit was issued on August 28, 2007 and comments are due on September 28, 2007. Comments are due after the Workshop at the request of the Permittees. A response to comments on the second draft will be prepared and will be issued prior to the Board adoption hearing that is tentatively scheduled for January 2008.

**Conclusion:**

The proposed Ventura County MS4 permit fully incorporates the Water Boards mission "to preserve, enhance and restore the quality of California's water resources, and ensure their proper allocation and efficient use for the benefit of present and future generations." To restore water bodies to their highest beneficial use or potential beneficial use, the permit includes Total Maximum Daily Loads (TMDL) provisions for non-storm water (dry weather) and storm weather (wet weather). The Planning and Land Development Program of this permit includes Hydromodification Control and Low Impact Development (LID) provisions and the Development Construction Program includes grading restrictions during the wet season that are intended to prevent water quality and habitat degradation. Post construction controls now include criteria for hydromodification mitigation, in addition to numerical criteria for storm water pollution control. The permit provides clarity and certainty in compliance expectation by identifying default Best Management Practices (BMPs) measures for construction and industry and incorporating Municipal Action Levels (MALs) as a numerical expression of the maximum extent practicable" (MEP) criterion.

The MS4 monitoring program has been expanded to assess compliance with effluent limitations and water quality objectives by requiring mass emissions estimates for discharges from the cities of San Buenaventura (Ventura) and Oxnard, additional monitoring for aquatic toxicity, additional monitoring for TMDL compliance, electronic submission of monitoring results no later than 45 days from sample collection date, and participation in a SMC Southern California Regional Bioassessment Monitoring Program.

Several studies to assess the chemical, physical, and biological impacts of receiving waters resulting from storm water discharges have been incorporated into the MS4 monitoring program. These studies include trash and debris quantification, Pyrethroid insecticides evaluation within Calleguas Creek, development of hydromodification control tools to predict and mitigate adverse impacts, low impact development implementation to document the effectiveness of its techniques, and participation in the Southern California Bight Project to assess the ecological disturbances and conditions of regional waters.

The over arching goal of the Ventura County MS4 permit is to:

- Eliminate unauthorized non-storm water discharges, and
- Reduce pollutants in storm water discharges to meet maximum extent practicable criteria, receiving water objectives, and total maximum daily loads.

To accomplish this, the Permittees will implement control measures, best management practices, and adopt and enforce ordinances, policies, and procedures, and/or regulations.

Overall, the Ventura County MS4 permit implements the Regional Board's objective to reduce storm water discharges and their associated pollutants to protect beneficial uses in the County of Ventura.

**Recommendation:** This item is presented for informational purposes, the Board is not being asked to take any formal action at this time. However, the Board may consider staffs' position on the critical issues summarized above in light of comments that will be received from the Permittees and interested parties, and provide direction to staff.

**Next Steps:** Staff plans to prepare a tentative permit for a Water Board hearing tentatively scheduled for the January 2008 where the tentative permit will be presented. Formal consideration and adoption of a tentative Ventura County MS4 Permit will be scheduled for the January 2008 Water Board hearing.