

Executive Advisory Committee

Stormwater Program – County of Los Angeles

May 29, 2008

Dr. Xavier Swamikannu (3rddraftVCMS4@waterboards.ca.gov)
Regional Water Quality Control Board, Los Angeles Region
320 West Fourth Street, Suite 200
Los Angeles, CA 90013-2343

Subject: Comments on the Third Draft Ventura MS4 Permit (NPDES No. CAS004002)

Dr. Swamikannu:

The Executive Advisory Committee (EAC) once again appreciates having the opportunity to reiterate our prior comments and provide new comments on the Draft Ventura County Municipal Separate Storm Sewer System (MS4) Permit. The EAC is composed of representatives from the Los Angeles County Municipal Stormwater Permittees and our monthly meetings are typically attended by representatives from over half of the Los Angeles County Municipal Separate Storm Sewer System (MS4) Permittees. You are receiving the agenda for our monthly meetings and we encourage your participation so that they could be a productive forum for discussion and clarification of Regional Water Quality Control Board initiatives, intentions, and objectives.

Although EAC member cities do not generally extend into Ventura County, we are concerned stakeholders to the process of developing a workable model regional MS4 permit. We further acknowledge the substantial effort of all the involved parties in preparing and reviewing multiple drafts and attending workshops and staff meetings. It was a rational, and greatly appreciated, decision to remove any reference to bacteria from Attachment C. However, like the Ventura County Permittees, we are disappointed to see the same overriding issues carried forward into the third draft. With this in mind, we support the extensive comments and supporting attachments supplied by the Ventura County Permittees and the sincerity with which they are attempting to achieve shared water quality objectives, within the confines of local fiscal resources and evolving, but still wildly conflicting, legislative and legal mandates.

Our first comment relates to a lack of clarity regarding Attachment C, Tables 3 and 4. For each pollutant, we recommend identifying the three “highest performing” BMPs used in developing the table. This will assist permittees and developers in selecting among the BMPs favored by the Regional Board and whether one type of BMP might perform “double duty” by controlling two or more pollutants of concern to the watershed or proposed project. Furthermore, some BMPs are more appropriate under one geomorphology and soil condition than another and listing them would facilitate that decision. The footnote should clarify that the range of values for each pollutant are the median effluent water quality values of the first and third “highest performing” BMPs, since the second highest value does not come in to developing the range of values. If the values on these tables are actually based on the 95th percentile, the footnote should reflect this.

The permit is long, complex and proscriptive, but will become even more so as TMDLs are inserted into it. TMDLs often result in separate implementation plans, monitoring and other requirements. We encourage you to find some other mechanism, such as attachments, for connecting them to the Permit. Their inclusion leads to arduous conversation with our regulated community (residents, business owners, development agents) about issues beyond the focal point of the permit, such as differing requirements between watersheds and beneficial use objectives.

The Municipal Action Limits (MALs) do not appear to appear to be action limits, which imply an advisory or at least not immediately enforceable regulatory status, but instead appear to be phased numeric effluent limits that may be enforceable through Mandatory Minimum Penalties. This enforcement mechanism inadequately considers the temporal and spatial variability inherent in runoff monitoring. The Board itself may be required to hear many appeals associated with typical runoff variability. We are concerned about the magnitude of this enforcement effort, for both the regulated and regulatory community, which could be better directed at locating and controlling a few major sources of pollution. Many of those involved with recent NOV's issued to 20 cities in the Santa Monica Bay area have made similar assertions. Furthermore, based on our developing understanding of how the MALs were developed, much of the source data comes from very different hydrologic regimes that include more annual rain, more even storm spacing, and less intensely developed communities. We encourage the Board to reconsider and focus the permit on developing a monitoring program and working with cities to identify the most flagrant sources of contamination. As your staff observed in using median rather than mean data, a very few significant samples or sources can taint the results from an entire population of data.

The MS4 Permittees remain concerned about overlapping monitoring programs. Local MS4 Permittees are already subject to point source discharge, receiving water, mass emission, regional, ambient and TMDL compliance monitoring programs. The draft permit would append a new Municipal Action Limits (MALs) program based on numeric criteria that are at odds with these other programs. As has been asserted by the Permittees and other experts for years, stormwater quality is extraordinarily variable and difficult to monitor. As was asserted at the February 24, 2007 Regional Board Retreat, there exist ample enforcement opportunities for the regulatory community, but insufficient resources with which to implement the Board's intent. Similarly, the MS4 Permittees are greatly concerned that this additional monitoring requirement will simply divert our attention from productive priority pollutant source control efforts to generalized catchment wide efforts that municipalities will be poorly equipped to implement or utilize the results from. A greater effort should be focused by the Board and MS4 Permittees on the General Industrial and Construction Activities Stormwater Permit discharges, as was suggested by State Panel of Stormwater Experts.

The findings should note the increasing cost of the our regional runoff water program, as identified in the Design Storm Task Force report, prepared under Board Staff direction and presented to the Board in December 2007. Staff level municipal support is greatly under projected during the budgeting process based on prior EPA and Regional Board reports that reference annual costs in the tens of dollars per household, while they now approach or exceed the thousands of dollars per household year range. It does little good to undervalue proactive municipal programs, while overstating the level of non-compliance, despite a lack of regulatory concern based on our continuing annual report submittals.

In doing a word search, we found the phrase “pre-developed” only in the definition section of the permit. All definitions should be word searched in the permit and, if not used in the permit body, eliminated to avoid future confusion and miscommunication.

The EAC again encourages the Board to consider our prior comments letter, which appear to have been significantly dismissed without consideration, along with those of the Los Angeles County MS4 Permit Watershed Management Committees, regarding the permit and its findings. In particular, we disagree with finding E 7 and E.24 which could limit the ability of local agencies to apply for Federal grant funding, and comment that this findings should be deleted.

The EAC would like to reiterate our interest in the draft Ventura County MS4 Permit, so as to avoid conflicting requirements in adjacent jurisdictional areas, and reserves the right to provide additional oral or written comments at the planned public workshop. We further encourage the Board staff to thoughtfully consider the many constructive suggestions of the Ventura County Permittees, which will have to implement the final permit. If you wish to further discuss these issues, or seek greater input from the EAC, please feel free to contact me at 562-904-7112.

Sincerely,

Original signed by

Gerald E. Greene, DEnv, PE, QEP
Chair, Executive Advisory Committee

cc: Ventura County MS4 Permittees
EAC MS4 Permittee mailing list