



E-memo	
Date	April 9, 2009
To	Sam Unger, LARWQCB
From	Ray Tahir
Subject	Revised Ventura MS4 Permit Comments

Please disregard the previous comments bearing the date of April 7, 2009 and replace with ones provided below. There is one revision (I), in blue and one added (III), also in blue.

I. Receiving Water Limitations

- Issue

The draft Ventura Permit – and Los Angeles County MS4 Permit – should revise its receiving water limitation provisions. RWL provisions in both permits prohibit water quality standard violations, but not exceedances. The problem with RWL in general is that prohibits discharges that cause or contribute to a water quality standards violation. It is a problem because it also seems to assume that permittees are in constant violation of Part 3.1 because under Part 3.3, permittees are required to comply with Part 3.1, which requires:

through timely implementation of control measures and other actions to reduce pollutants in the storm water discharges in accordance with the requirements of this Order including and modifications.

To complicate matters, the RWL provision goes on to say that:

If exceedance(s) of water quality objectives or water quality standards (collectively WQS) persist, notwithstanding implementation of this permit, the Permittees shall ensure compliance with Receiving Water Limitations 1 and 2 by comply with the following procedure ...

You will note that the issue here is not a water quality standard **violation** but rather a water quality standard **exceedance**. These are different issues. A violation connotes non-compliance while an exceedance suggests that a violation may be occurring, which cannot known until a determination is made, presumably by the permittee or the Regional Board, that the permittee caused or contributed to it. In other words, in one breath the RWL provision assumes that permittees are constantly violating water quality standards but do not have to worry about it as long control measures and other actions in keeping with the permit as being implemented. However, if the exceedance – not violation –

persists, despite implementing the permit, the affected permittee is required to submit a report specifying new BMPs to address the exceedance – but not the violation. DO YOU SEE INCONGRUENCY HERE AND THE CONFUSION IT CAUSES? Things would be simpler BY changing violation to exceedance as in the case with Orange County MS4 permits. If a an exceedance persists and the affected permittee does not follow proper corrective procedure (through the iterative process) then a violation would arise.

There is still yet another problem requiring correction: Water quality objectives and water quality standards can be interpreted to mean that they are the same thing. The RWL provision as mentioned above refers to a water quality standard as being a combination of water quality standard and water quality objective, which could mean the same thing. But they can't be. The Los Angeles Basin Plan defines a *water quality standard as a combination of beneficial uses and water quality objectives (see Los Angeles Basin Plan, page 3-1)*. What's missing is the beneficial use piece. The Orange County MS4 permit RWL language addresses this problem.

Why is this important? If an exceedance of water quality objective occurs but no beneficial use is being impaired, then there should be no exceedance and therefore no violation for that matter. It is especially important now given that the NRDC/Baykeeper are suing the County of Los Angeles for allegedly not complying with RWL provisions (thought it's not exactly clear as which ones).

Lastly, the Regional Board should give consideration to eliminating RWL provision 3.2. The way a nuisance is defined it is almost impossible to prove that a permittee has caused or contributed to one.

III. Post-Construction Runoff Mitigation Requirements from Streets, Roads, and Highways

- Issue

The proposed Ventura MS4 permit calls for requiring post-construction runoff mitigation for additional project categories, including streets, roads, highways, and freeway construction of 10,000 square or more of impervious surface. Such projects are required to incorporate USEPA guidance in re: *Managing Wet Weather with Green Infrastructure* -- albeit to the maximum extent practicable (MEP). This requirement, notwithstanding the MEP qualifier, really requires much more discussion before it can be written into any MS4 permit. Given the current design wisdom relating to street and road design, which is based on cost, performance, and safety, it is not a good idea to require infiltration technologies without doing a study and piloting some of the controls that are discussed in the USEPA's guidance document on this subject. In theory such controls appear to be feasible but may not be practical in the real world; and may event result

unintended environmental consequences (which supports the need for a CEQA review).

- Recommendation

Require a study and pilot projects for testing green technologies for streets. This task could be assigned exclusively to CalTrans and/or Ventura County.

III. The MS4 Permit Should Have a Provision to Enable a Permittee to Ask for Clarification

- Issue

Since the municipal NPDES program began in Los Angeles County, each permit has had issues with clarity, conflicting requirements, and just plain old mistakes. When these issues were brought to the Regional Board – and even to the Principal Permittee – they were not acted on except through the administrative appeal process initiated by permittees.

- Recommendation

The permit, therefore, should contain a provision that allows a permittee to ask for clarification as to the meaning a permit requirement that may not be clear, confusing, or in error. The first step in that process would be to ask Regional Board staff for such a determination. Staff should be compelled within 30 days to provide such a response. If, however, staff chooses not to respond, the affected permittee should be able to ask the Regional Board to review the matter. If it chooses not to, then the issue could be appealed to the State Water Resources Control Board through an administrative appeal.

This recommendation is made in consideration of the NRDC/Baykeeper litigation against the County of Los Angeles over RWL compliance. As has been noted above under the RWL issue, the RWL provision is extremely unclear and confusing, and can be rise to multiple interpretations.