



*Ventura Countywide
Stormwater Quality
Management Program*

Participating Agencies April 10, 2009

Camarillo Ms. Tracy Egoscue
Executive Officer
Los Angeles Regional Water Quality Control Board
County of Ventura 320 4th Street, Suite 200
Los Angeles, CA 90013

SUBJECT: FEBRUARY 24, 2009 TENTATIVE ORDER OF THE VENTURA COUNTY MUNICIPAL SEPARATE STORM SEWER SYSTEM PERMIT (NPDES No. CAS004002) FOR THE VENTURA COUNTY WATERSHED PROTECTION DISTRICT, COUNTY OF VENTURA AND THE INCORPORATED CITIES

Fillmore

Moorpark

Ojai

Dear Ms. Egoscue:

Oxnard

The Ventura Countywide Stormwater Program ("Ventura Program") would like to take this opportunity to provide comments on the Regional Water Quality Control Board's ("Regional Water Board") Tentative Order of Waste Discharge Requirements for Storm Water Discharges from the Municipal Separate Storm Sewer System ("MS4") within the Ventura County Watershed Protection District, County of Ventura, and the Incorporated Cities therein (collectively referred to as the "Permittees") ("Tentative Order") (NPDES Permit No. CAS004002), which was released for public comment by the Regional Water Board on February 24, 2009.¹

Port Hueneme

San Buenaventura

Santa Paula

We wish to first express our appreciation of the Regional Water Board's staff efforts to meet and consider our concerns with the previous draft orders. These efforts aided in crafting a Tentative Order that is protective of water quality and builds upon an award winning stormwater management program. The Tentative Order is comprehensive and provides clear metrics for assessing the effectiveness of our program and addressing relevant water quality issues within our watersheds.

Simi Valley

Thousand Oaks

Ventura County
Watershed Protection
District

¹ In addition to the Permittees comments provided here, the Permittees have joined Heal-the-Bay and the Natural Resources Defense Council in a separate joint comment letter dated April 10, 2009 that articulates an agreement between the parties. As expressed in the joint letter, those comments and the positions expressed therein apply only to the extent that the Regional Water Board agrees with and revises the Tentative Order to reflect all of the comments contained in that letter. If the Regional Water Board determines that it is not appropriate to revise the Tentative Order accordingly, the Permittees comments expressed here on same or similar issues shall be considered the Permittees comments and position on those issues.



Before expanding upon our comments on the Tentative Order, we would like to highlight a couple of significant observations. First, the Tentative Order is, in every sense of the word, a ground breaking permit. From the development and use of municipal action levels, to establishing performance standards for treatment control best management practices (BMPs), to specifying specific BMP requirements for businesses, industries, and construction sites; the Tentative Order sets a high bar for California's municipal stormwater programs. Because of the ground-breaking nature of this Tentative Order, it will require the Permittees to substantially revise the existing Stormwater Management Program in Ventura County. As a result, costs associated with implementation of the Stormwater Management Program will also increase substantially.

Furthermore, the Tentative Order as proposed will protect existing high quality water and will lead to real water quality improvements. The Permittees take pride of the fact that we have some of the cleanest waterbodies and beaches in Southern California. This Tentative Order will continue to build on our existing efforts to protect these waters. However, as discussed further below, the Permittees would be remiss to not comment or acknowledge the substantial cost associated with implementing the Tentative Order. To that end, we encourage the Regional Water Board to carefully consider the potential economic impact of any future revisions or changes to the Tentative Order.

Our specific comments are organized around some of the overriding approaches acknowledged in this Tentative Order.² They include:

1. Economic Considerations
2. Municipal Action Levels (MALs)
3. Best Management Practice (BMP) Performance Standards
4. Construction BMPs
5. Planning and Land Development Program
6. Public Agency Trash Management Program
7. Total Maximum Daily Loads (TMDLs)
8. Monitoring

Each approach is discussed in this cover letter. More specific technical comments on the Tentative Order and its provisions are summarized in Attachment A. Additional Legal and Policy comments are provided in Attachment C.³

² Although the Tentative Order addresses many of the concerns expressed in previous comments submitted by the Permittees, the Permittees still maintain a number of general concerns with the Tentative Order and its potential impact to Ventura County and its municipalities. To that extent, the Permittees hereby incorporate by reference all previous comments submitted on March 6, 2007, October 12, 2007, and May 28, 2008 in response to administrative draft versions of the Tentative Order.

³ The additional comments provided in Attachments A and C are provided in attachment form for administrative ease only. The Regional Water Board shall consider all of the comments contained in the attachments as equal comments that are subject to the Regional Water Board's obligation under the Code of Federal Regulations to prepare responses thereto.

I. Economic Considerations

As a preliminary matter, the Regional Water Board must recognize that the Tentative Order will significantly increase program costs for the Ventura County Stormwater Management Program. In fact, we estimate that the program costs to implement the Tentative Order will double from the current level of \$35 per household to \$60 per household. In Finding E.28, the Regional Water Board characterizes the requirements in the permit as reasonable and that the cost of compliance does not justify a lessening of the requirements as proposed in the Tentative Order. (See Tentative Order at p. 21.) The substance of this finding is based on the Regional Water Board's assessment of program cost in its "Economic Considerations of the Proposed Ventura Permit." The Permittees are concerned that the economic analysis relied upon by the Regional Water Board is flawed because it did not assess the cost of the Tentative Order but rather estimated the cost for the Permittees to comply with the stormwater permit issued in 2000. It is an understatement to say the current Tentative Order is a significant expansion of the County's 2000 permit. In its assessment, the state estimated a cost of \$29 per household. In contrast, the actual average household cost in Ventura County is \$35 to implement the 2000 permit. Thus, the Regional Water Board's economic assessment greatly underestimates costs associated with implementing the proposed Tentative Order.

While the Permittees are committed to the protection of our water resources, we must point out the fiscal constraints that are facing municipalities and private citizens in Ventura County and across the State. Thus, as we move forward to implement the Tentative Order, if adopted as is, we must have sufficient flexibility to identify more cost effective BMPs that may be substituted for the ones identified in the Tentative Order. As you know, the Tentative Order provides for a BMP substitution option. In implementing this option, we believe it imperative that the Regional Board remain open to alternative approaches and schedules to provide the Permittees with flexibility in addressing fiscal constraints while still protecting water quality. This is especially true in these challenging economic times.

II. Municipal Action Levels

The Tentative Order significantly modifies the application of MALs from a numeric metric to assess compliance with the technology based Maximum Extent Practicable (MEP) standard to one of assessing the performance of the program. We believe, as noted in our previous comment letters, this revised approach is consistent with current USEPA guidance and regulations, and more recently the report prepared by the "Blue Ribbon Panel" as convened by the State Water Resources Control Board⁴. The Blue Ribbon Panel's (BRP) report clearly states the position that numeric limits for municipal stormwater discharges are not possible at this time. However, the BRP did agree that "action levels" may be used to identify "bad actor" catchments. Specifically, the BRP Report states:

It is not feasible at this time to set enforceable numeric effluent criteria for municipal BMPs and in particular urban discharges

⁴ The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial, and Construction Activities (June 19, 2006).

*For catchments not treated by a structural or treatment BMP, setting a numeric effluent limit is basically not possible. However, the approach of setting an 'upset' value, which is clearly above the normal observed variability, may be an interim approach which would allow "bad actor" catchments to receive additional attention. For the purposes of this document, we are calling this "upset" value an **Action Level** because the water quality discharge from such locations are enough of a concern that most all could agree that some action should be taken (BRP Report at p. 8, emphasis added.)*

Although the Tentative Order revises the use of MALs from being a determination of MEP to being an assessment tool, please be assured that the revised MALs will require the Permittees to address discharges that exceed the MALs as the Tentative Order requires the Permittees to prepare and implement a MAL Action Plan. To our knowledge, this Tentative Order is the first of its kind to establish numeric metrics for assessing the effectiveness of a municipal program.

Notwithstanding the revisions to the language in the Tentative Order, we are concerned that the Fact Sheet/Staff Report discussion with respect to the revised language is inconsistent. As indicated immediately above, the MAL language in the Tentative Order alters the MALs from being an assessment of MEP to an assessment of performance of certain catchments and BMPs. The Fact Sheet/Staff Report, however, describes the MALs as a metric for determining MEP. (See Fact Sheet/Staff Report for the Municipal Storm Water and Urban Runoff Discharges within Ventura County Flood Control District (May 7, 2009) at pp. 17-18.) To avoid confusion and uncertainty with respect to the use and intent of MALs within the Tentative Order, the Fact Sheet/Staff Report must be revised accordingly. We have provided suggested revisions on Attachment A, No. 76.

Finally, to the extent that the Regional Water Board determines that MALs are appropriate for inclusion in the Ventura County MS4 permit, the MALs contained in the Tentative Order are more appropriate as compared to the MALs included in previous drafts because they are derived from a more relevant data-base. More specifically, the Tentative Order uses U.S. EPA zone 6 database, which reflects data from the arid southwest areas of the country. In contrast, the MALs in previous drafts were derived from the more general national dataset, which included numerous east coast communities with higher rainfall amounts. Use of the zone 6 regional database will allow the Ventura County Permittees to focus their attention on watersheds that more closely reflect the semi-arid nature of their communities. In a similar vein the use of the 80th percentile value to establish the MAL is subject to debate. The Permittees recommend the substitution and the use of the 90th percentile value in the Tentative Order as more appropriate to identify problematic discharges.

III. BMP Performance Standards

The Tentative Order establishes for the first time in California performance standards for treatment control BMPs. As noted in our previous comments, the Permittees support the idea of performance standards. Our previous concerns were directed to the derivation and application of the standards proposed. The Tentative Order addresses our concerns because it provides the

Permittees with the appropriate structure for elevating BMP performance and for holding developers accountable for their BMP design and construction.

IV. Construction BMPs

The Tentative Order establishes a risk-based approach for addressing runoff from construction sites. The Permittees support this BMP tiered approach as a constructive and implementable program. By establishing a defined set of BMPs as a function of the project size and impact on local water bodies, the Tentative Order provides the Permittees with the structure and flexibility necessary to direct local resources to real water quality concerns. Furthermore, the Permittees support the removal of the wet weather variance program for high-risk sites, as this variance program as originally proposed would have been cumbersome and expensive to implement. It also would have been susceptible to litigation because it was not adopted consistent with U.S. EPA regulations for developing technology based effluent limits.

V. Planning and Land Development Program

The Planning and Land Development Program contains extensive requirements for on-site low impact development (LID) strategies, hydromodification controls and treatment control BMPs. With respect to the LID strategies, the proposed requirements will fundamentally change land development in Ventura County. The Tentative Order will require municipalities to implement LID strategies (i.e., LID BMPs) by complying with an effective impervious area (EIA) of 5% for undeveloped sites. To render an impervious area ineffective the developer must implement LID BMPs for the water quality storm (e.g. 85%, 24 hour storm event) through infiltration, capture and reuse or through vegetated BMPs. While we support the concept of well designed BMPs to address the water quality storm, we would submit that the LID BMP(s) should be sized, at a minimum, to infiltrate, evapotranspire, reuse, or collect and detain the "delta" runoff volume, which is defined as the excess runoff⁵ from the water quality (SQUIMP) design storm event.

As part of the Permittee's effort to assess the practicality of various approaches for LID, we prepared the attached white paper: "*Low Impact Development Metrics in Stormwater Permitting*" (Attachment B). This paper carefully examined the feasibility of implementing LID strategies for a range of development projects under various rainfall conditions in both Ventura and Orange Counties. The paper demonstrates the feasibility of certain strategies as well as identifies the challenges associated with the various strategies. For redevelopment projects the Tentative Order allows more flexibility in meeting the 5% EIA standard although still requiring compliance to treat the water quality storm event. The Permittees continue to support such an approach.

With respect to the EIA criterion, the Permittees would submit that there is considerable debate and concern within the stormwater quality management/science community as well as among planners and practicing landscape architects as to the efficacy of EIA as a controlling criterion. Specific aspects of this concern have been noted in our previous comments on the draft orders

⁵ Excess storm water runoff = volume of post-development runoff minus pre-development runoff for the 85th percentile storm event (or equivalent water quality design event).

and include whether this EIA criterion should be used and, if used, whether it should be applied on a site-by-site basis. We have also commented previously on our concerns regarding its potential implications to urban redevelopment, smart growth, and urban sprawl. Thus, the proposed EIA criterion should be further evaluated in light of larger environmentally beneficial societal goals, such as redevelopment, brownfield development, and infill development to avoid unintended consequences and further complications.

With respect to hydromodification criteria, the Tentative Order correctly identifies the need for such criteria but appropriately identifies exemptions for conditions where warranted. The Tentative Order also allows for the continued coordination and support of the Southern California Storm Water Monitoring Coalition's (SMC) efforts to develop a regional methodology to mitigate adverse impacts of hydromodification due to urbanization. The Permittees support such an approach because it is practical, while being protective of stream-bed integrity. We also support the interim hydromodification requirements until such time that the SMC completes the Hydromodification Control Study. Lastly, the exemption provisions address many of our concerns expressed on the previous draft orders. These provisions should allow the Permittees to focus on those discharges that pose the most significant threat to stream bed integrity and water quality.

VI. Public Agency Trash Management Program

The Tentative Order includes a comprehensive approach for addressing trash in Ventura County. Although trash is not a significant issue in the water-ways of Ventura County (e.g., less than 12 miles of water ways are listed as trash impaired for the entire County), the Permittees support taking an aggressive approach to trash management. The Tentative Order provides the Permittees with the necessary flexibility to prioritize drainage systems for trash generation, and subsequent clean-up and removal. Furthermore, the Tentative Order allows the Permittees to develop alternative approaches that reflect the nature and composition of the municipality. The Permittees support the flexibility provided for in the Tentative Order and encourage the Regional Water Board to continue providing the flexibility needed to tailor municipal programs for relevant and identified water quality issues.

VII. TMDLs

Consistent with 40 C.F.R. § 122.44(d)(1)(vii)(B), the Tentative Order incorporates wasteload allocations (WLAs) for effective TMDLs as permit limits. As required by 40 C.F.R. § 122.44(d)(1)(vii)(B), the permit limits in the Tentative Order have been modified from previous drafts of the permit to be "consistent with the assumptions and requirements of available WLAs" by being incorporated as receiving water limits in the permit. Additionally, the WLAs have appropriately been expressed in the form of BMPs consistent with EPA's 2002 Memorandum *Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs*. (See Attachment C for further legal and policy discussions on this issue.) As stated in that memorandum:

- WQBELs for NPDES-regulated storm water discharges that implement WLAs in TMDLs may be expressed in the form of best management practices (BMPs) under specified

- circumstances. (See 33 U.S.C. §1342(p)(3)(B)(iii); 40 C.F.R. §122.44(k)(2)&(3).) If BMPs alone adequately implement the WLAs, then additional controls are not necessary.
- EPA expects that most WQBELs for NPDES-regulated municipal and small construction storm water discharges will be in the form of BMPs, and that numeric limits will be used only in rare instances.
 - When a non-numeric water quality-based effluent limit is imposed, the permit's administrative record, including the fact sheet when one is required, needs to support that the BMPs are expected to be sufficient to implement the WLA in the TMDL. (See 40 C.F.R. §§ 124.8, 124.9 & 124.18.)
 - The NPDES permit must also specify the monitoring necessary to determine compliance with effluent limitations. (See 40 C.F.R. § 122.44(i).) Where effluent limits are specified as BMPs, the permit should also specify the monitoring necessary to assess if the expected load reductions attributed to BMP implementation are achieved (e.g., BMP performance data).
 - The permit should also provide a mechanism (e.g. iterative, adaptive management BMP approach) to make adjustments to the required BMPs as necessary to ensure their adequate performance.

In accordance with EPA's Guidance, the BMPs included in the permit will be sufficient to implement and achieve the WLAs in the TMDLs. Further, the specified monitoring program is sufficient to determine compliance load reductions resulting from BMP implementation. This combined with the incorporation of the "iterative process" is consistent with USEPA's Guidance.

While the Permittees believe that the language in the Tentative Order meets the requirements of 40 C.F.R. §122.44(d)(1)(vii)(B) and is consistent with EPA's Guidance, we recommend the following revisions to provide further clarification that the WLAs will be implemented through BMPs and to provide a mechanism for making adjustments to the BMPs to ensure their adequate performance. Our suggested revisions to the findings and to Part 6 of the Tentative Order are as follows:

Finding F.3

~~The permit provisions and BMPs implementation of measures set forth in this Order are reasonably expected to reduce the discharge of pollutants conveyed in storm water discharges into receiving waters, and to implement meet the TMDL WLAs for discharges from MS4s that have been adopted by the Regional Water Board.~~

Part 6 – Total Maximum Daily Load Provisions

~~II. Each permittee shall attain the storm water WLAs incorporated into this Order by implementing BMPs in accordance with the MS4 effluent quality workplan and source identification approved by the Executive Officer. The permit provisions and BMPs identified in Parts 1, 2, 3, 4, and 5 implement the approved WLAs for all TMDLs identified in this section. Each permittee shall modify their SMP to include BMPs to implement the approved WLAs.~~

Provision (b)(2) under each TMDL, to read as follows:

~~If any WLA is exceeded at a compliance monitoring site, permittees shall implement BMPs in accordance with the TMDL Technical Reports, Implementation Plans or as identified as a result of TMDL Special Studies identified in the Basin Plan Amendment. Following these actions, Regional Water Board staff will evaluate the need for further enforcement action.~~ Exceedances of the WLAs at the receiving water compliance locations will initiate the implementation of additional BMPs identified in the permit and modification of the SMP to include additional BMPs to further reduce discharges of pollutants to achieve compliance with the WLAs.

With these modifications, the Tentative Order will clearly implement the TMDL in accordance with EPA's 2002 memorandum.

VIII. Monitoring

The Tentative Order reflects the great deal of work that has been done to resolve many technical issues and ultimately creates a monitoring and reporting program that will support and protect water quality. The Ventura Countywide Stormwater Management Program currently has an exemplary monitoring program with a state-of-the-art data management system; the new monitoring program will greatly expand upon this effort. The addition of special studies, outfall monitoring and beach water quality monitoring will more than double the cost of the monitoring program, all which is in addition to a significant amount of other monitoring occurring within the County: TMDLs, Ocean outfall, SWAMP, inland wastewater treatment plants and AB 411 (beach water quality) Programs.

The Permittees have put a great deal of effort into identifying appropriate urban outfall monitoring sites for each Permittee by utilizing Ventura County's Geographic Information System, overlying various land uses (residential, commercial, industrial, agricultural, open space) and jurisdictional responsibilities with watershed/subwatershed boundaries. The result of this effort is monitoring locations that capture a significant portion of each Permittees' urban runoff or signature independent of other land uses or pollutant sources. This will generate data that will support each Permittee's Stormwater Program, allowing each Permittee to use this data to improve their Program's effectiveness, which ultimately will improve water quality.

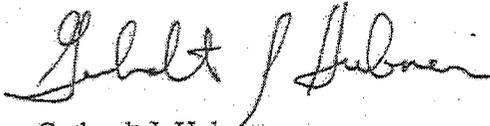
We would also like to point out that the Tentative Order identifies a number of special studies. Two of them, *Hydromodification Control Study* and *Low Impact Development*, are done in regional partnerships (Southern California Monitoring Coalition and Southern California Coastal Watershed Research Project (SCCWRP)) and will lead to better land development practices. The other special studies will help provide a detailed picture of the habitat and water quality of Ventura County. One of these is the expanded bioassessment study, also to be done in partnership with SCCWRP. As you know, Ventura County participates in SCCWRP as both a Commission member, and through SCCWRP's Technical Advisory Group. SCCWRP's regional study will cover all of Ventura County and south to the state border, going well beyond the established bioassessment currently performed by the Program. It includes new labor intensive field measurements along with new requirements for extensive chemistry and toxicity analysis at 75 sites. Additionally, a pyrethroid study will periodically examine local watersheds

to determine: 1) if there is a problem; where the problem may exist; and 3) if any trends can be identified. Thus, in total the Permittees are supporting either directly or indirectly extensive monitoring efforts. Such support must also be balanced with other permit obligations.

Summary

The Permittees recognize that the Tentative Order is a significant step forward in addressing urban runoff in Ventura County. We would submit that the Tentative Order, when viewed in the whole and not as individual parts, is comprehensive and protective of water quality. However, the comprehensive nature of the Tentative Order will significantly increase local agency and citizen costs to implement the program. In light of these increased costs, we encourage the Regional Water Board to carefully consider the implications associated with any future modifications as such modifications to one program element would likely come at the expense of another. Again, we thank you and your staff for the time and effort in meeting with the Ventura County Permittees to work through the many issues in the previous draft orders. Although it will come with substantial costs, overall the Tentative Order is a significant improvement and will result in protection of water quality in a constructive and effective manner. If you have any questions, please contact me at (805) 654-5051, or via email at Gerhardt.Hubner@ventura.org

Sincerely,



Gerhardt J. Hubner
*On Behalf of the Entire
Ventura Countywide
Stormwater Management Program*

cc: LARWQCB Board Members
Sam Unger, Los Angeles Regional Water Quality Control Board
Ventura County City Managers
Marty Robinson, Ventura County Executive Officer
Jeff Pratt, Ventura County Public Works Director
Ventura Countywide Stormwater Management Program Permittees

Attachments

- A. Specific Technical Comments Matrix
- B. White Paper: "*Low Impact Development Metrics in Stormwater Permitting*", dated January 2009, prepared for the Ventura Countywide Program and Orange County Stormwater Program, prepared by Geosyntec Consultants and Larry Walker Associates with assistance from Hawks and Associates; and "*Response to Critical Comments on 'Low Impact Development Metrics in Stormwater Permitting'*", dated April 9, 2009
- C. Legal and Policy Comments

