



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street

San Francisco, CA 94105-3901

April 9, 2009

Tracy Woods
Los Angeles Regional Water Quality Control Board
320 West 4th Street, Suite 200
Los Angeles, CA 90013

Re: Draft Ventura County MS4 Permit (NPDES Permit Number CAS004002)

Dear Ms. Woods:

Following below are EPA Region 9's comments on the February 24, 2009 Tentative Draft Permit for the Ventura County Municipal Separate Storm Sewer System (MS4).

EPA appreciates the efforts made by Regional Board staff, and is generally supportive of the approach taken in this draft permit. Our comments concern two aspects of the draft permit, Low Impact Development (LID) requirements and requirements related to Total Maximum Daily Loads (TMDLs). The permit should be improved to ensure it contains clear, measurable, and enforceable requirements in these two areas.

A. Implementation of LID Requirements

EPA generally agrees with the draft permit's approach for incorporating LID requirements, and appreciates that the draft permit (in section 5.E.III.1.) makes reference to EPA's January 2008 "Action Strategy for Managing Wet Weather with Green Infrastructure."

1. We recommend that the permit's fact sheet explain the permit's intentions for implementation of LID in section 5.E.III ("New Development/Redevelopment Performance Criteria"). At the time of our review of the permit, the draft fact sheet's discussion of section 5.E of the permit was unfinished, and does not describe the intentions of the LID provisions. For example, it would be useful for the fact sheet to describe the permit's intentions for allowing for alternatives to achieving the 5% Effective Impervious Area (EIA) requirement, and how these alternatives would be implemented. Similarly, the fact sheet provides an opportunity to discuss the permit's intentions for the mitigation of "excess surface discharge."
2. We have several concerns with the text in section 5.E.III.1.b. First, this section notes that compliance may be achieved via "payment of an in-lieu fee, or use of stormwater credits as described in this section." However, there is not a description of in-lieu fees or

stormwater credits in this section. Section 5.E.IV.4 discusses Mitigation Funding, but does not include the framework necessary to be an effective means for compliance with the permit.

We recognize that there may be situations where site constraints make the achievement of 5% EIA impractical. If there is an intention of providing alternatives to achieving 5% EIA other than preparation of a Redevelopment Project Area Master Plan (RPAMP), the permit should provide clear requirements for these alternatives. We would suggest consideration of two specific options. First, page 6 of the February 23, 2009 letter from NRDC and San Diego Coastkeeper to the Executive Officer of the San Diego Regional Board (enclosed) suggests text entitled "Alternative Compliance and Offsite Mitigation." Following this approach, the permit could require the retention of stormwater at an offsite location corresponding to 1.5 times the volume which cannot be practically managed via LID at a New Development or Redevelopment project. Second, as provided in section XII.E of the Santa Ana Regional Board's March 25, 2009 draft Orange County MS4 permit, the permit could include an Alternatives and In-Lieu Programs section which provides opportunities for the Executive Officer to approve key aspects of programs such as the collection of mitigation fees and use of these fees for watershed improvement projects. If it is the permit's intent to include alternatives to 5% EIA or a RPAMP, the permit should be revised to include clear provisions, including appropriate oversight, which describe the circumstances under which the permittees may utilize alternatives.

Additionally, it's unclear what is intended by the last two sentences in this section, which separately refer to "development projects in undeveloped areas," and "redevelopment projects or development projects that can be demonstrated that the 5% EIA requirement is infeasible." It is unclear whether there is an intent to distinguish between these types of projects; the permit provisions in this section, however, do not appear to result in differing compliance options.

Lastly, it's unclear why this section refers to the requirement to comply with section 5.E.III.3 (corrected typographical error). Section 5.E.III.3 must be complied with by all New Development and Redevelopment projects regardless of whether it's referred to here.

We would suggest the following as replacement text for section 5.E.III.1.b:

All New Development and Redevelopment Projects identified in section 5.E.II must limit their effective impervious area (EIA) to 5% or less. This requirement may be implemented through use of site features or Alternative Stormwater Mitigation Programs such as a Redevelopment Project Area Master Plan (RPAMP) or offsite mitigation as described in section XX. [reference to section "XX" if there is a new section on alternative compliance]

3. Note that there is a word processing error in section 5.E.III.1.c – "All features structured constructed..."

4. It appears that the intent of section 5.E.III.1.e is that all stormwater discharges not managed via LID tools must be mitigated using conventional stormwater controls (e.g. vault-based treatment). However, as drafted it appears that this section would only require control of the stormwater volume specified in section 5.E.III.3, which is required without the inclusion of section 5.E.III.1.e. If our understanding of the intent is correct, we would suggest modifying this section to make it clear that all stormwater volume not addressed by LID tools must be mitigated by conventional stormwater controls.
5. The reference at the top of page 57 ("5.E.III.3(a)(2)") is to the wrong section. It appears that this should be a reference to section 5.E.III.2.(a)(3).
6. Note that there are two apparent formatting/numbering errors on page 58 ((4) and (5)).
7. As noted in comment #1 above, section 5.E.IV.4 should be revised. The permit should include clear provisions describing the circumstances under which the permittees may utilize alternatives to achieving 5% EIA. If mitigation funding is to be part of an alternative compliance option, there should be specific provisions for how fees will be collected and used, along with appropriate oversight.

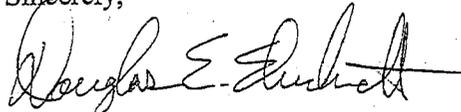
B. Total Maximum Daily Loads (TMDLs)

In comments provided to the Regional Board on May 29, 2008, EPA pointed out the need to improve the language in the April 29, 2008 draft permit to make it clear how compliance with TMDL Waste Load Allocations (WLAs) will be determined. These comments were not addressed in the February 24, 2009 revision to the draft permit. We continue to believe that improved permit language is needed to clarify the permit's requirements with respect to WLAs. It is our understanding that adding the following sentence to section 6.I. of the permit would appropriately clarify the permit's intent:

In order to achieve compliance with this Part of the permit, data collected pursuant to the "Compliance Monitoring" provisions of this Part must demonstrate attainment of WLAs.

We appreciate the opportunity to provide input on this draft permit. If you would like to discuss these comments, please contact John Tinger at (415) 972-3518, or Eugene Bromley at 415-972-3510.

Sincerely,



Douglas E. Eberhardt, Chief
NPDES Permits Office

Enclosure