



CITY OF COSTA MESA

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FROM THE DEPARTMENT OF PUBLIC SERVICES/ENGINEERING DIVISION

January 30, 2009

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Gerard Thibeault
Executive Officer
California Regional Water Quality Control Board, Santa Ana Region
3737 Main Street, Suite 500
Riverside, California 92501-3348

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**SUBJECT: Draft Order No. R8-2008-0030 NPDES No. CAS618030
Comment Letter**

Dear Mr. Thibeault:

The City of Costa Mesa appreciates the opportunity to provide comments on the Regional Water Quality Control Board's (RWQCB) Draft Order as prepared and distributed by Regional Board staff. The City is looking forward to working with your staff, the principal permittee (County of Orange), fellow co-permittees, and other stakeholders, to develop a program that will insure continued improvements to surface water quality. Now, more than ever in these challenging economic times, the City appreciates and recognizes the benefits of collaborating with other agencies to continue protecting our surface waters.

The Orange County Stormwater Program has been in existence under a National Pollutant Discharge Elimination System (NPDES) permit since 1990. Since then, the City of Costa Mesa has been a copermitee along with 33 other cities in the County of Orange. This permit was re-issued in 1996 and 2002. In 2006, the City of Costa Mesa contributed to and supported the County's submittal of a Report of Waste Discharge (ROWD) in anticipation of permit renewal in 2007. The ROWD identified many positive program outcomes and added program development commitments to the Drainage Area Management Plan (DAMP) and subsequently into the City's Local Implementation Plan (LIP).

The City recognizes the acknowledgement by the Regional Board of the iterative management approach to comply with receiving water limitations. There have been discussions of implementing Municipal Action Limits (MALs) in other permits in the Southern California area. The City continues to support compliance with water quality objectives through the iterative approach. While the draft Tentative Order is clearly responsive to the recommendations made in the ROWD, the City is concerned with the proposed new requirements intended to increase the City's accountability, extend the regulatory reach of its

jurisdiction, incorporate additional Total Maximum Daily Loads (TMDLs), and create a new basis for the land development requirements of the Order. This concern is now intensified due to the current economic conditions.

The City looks forward to continuing its partnership with the County as principal permittee. We feel this continues to be the most economically feasible and effective method of implementing and complying with the Order, while achieving the most benefit to surface waters of the United States.

The following are the City's main concerns with the draft Tentative Order:

I. Increasing Administrative Burden

At the inception of the Program, the City supported development of a Drainage Area Management Plan (DAMP) to serve as the principal policy and programmatic guidance document for the program. Since 1993, the DAMP has been modified through an adaptive management process to ensure the City's accountability, and delivery of positive water quality and environmental outcomes. The DAMP now provides definitive guidance in the development of our City specific Local Implementation Plan (LIP) which specifically describes how the Program will be implemented at a local level. Additionally, the annual progress report spells out California Stormwater Quality Association (CASQA) program effectiveness assessment guidance which includes program performance metrics. The Draft Tentative Order requires additional reporting to the Regional Board staff. The City believes that modifying the existing reporting processes, rather than creating additional reporting requirements, is the most effective approach to increasing transparency and accountability. Such an approach also offers the additional benefit of identifying opportunities to reduce rather than increase the administrative burden of the Program for both the RWQCB and the City.

II. Expanded Regulatory Reach

In the most recent Annual Report prepared by the City, over 1000 industrial and commercial facilities were identified which are subject to inspection for compliance with local water quality ordinances. Nonetheless, the Draft Tentative Order proposed new requirements including eleven (11) new priority categories, which significantly increase the coverage of commercial facilities subject to inspection. These changes would essentially double the City's inventory to 2,000-2,200 inspections throughout the permit term. Additionally, it mandates the annual inspection of treatment controls in completed land development and re-development projects, and more prescriptively turns the attention of our efforts toward residences and mobile businesses. The concern here is the significant increase in resources needed from the City and the absence of technical justifications for this increase.

With land development projects, the installation and subsequent maintenance of treatment controls certainly need to be verified. However, self certification, along with other third party verification mechanisms should be included as an option in addition to program staff performing the inspections and verifications. Given the current state of the economy and shrinking budgets, the Regional Board should give great weight to the best use of limited resources in achieving water quality objectives.

The prescribed creation of a residential program also needs to be carefully considered. The effectiveness of "Project Pollution Prevention", the public education and outreach initiative of the program, has been validated by public opinion surveys that show incremental, but also statistically significant, increases in public awareness of stormwater issues and positive changes in protective behaviors. The new residential program requirements appear duplicative of the current public education and outreach obligations that have already produced, and continue to yield, positive measureable outcomes. However, there is also a separate concern that prescribed efforts to "require residents to implement pollution prevention measures" (XI. 2) will be counter-productive and quickly erode general public support for the program. Justification for this additional program when current requirements have produced positive outcomes need to be provided.

The last area of prescribed new regulatory oversight is mobile businesses. The City, through the public education and outreach committee, has already produced educational materials for these businesses, and cooperatively developed wash water disposal options with our local sewerage agencies, with which we have coordinated our enforcement efforts. Through the City's business license process, we are able to identify mobile businesses and supply them with these educational materials. Requiring further regulation of these businesses is a potentially resource-intensive undertaking.

III. Creating a New Basis for the Land Development Requirements of the Order.

The Model Water Quality Management Plan prepared for the Third Term Permit explicitly recognizes the channel stability implications of watershed urbanization and provides for this potential impact to be addressed as a hydrologic condition of concern. Since that time, an Effective Impervious Area of 5% or less has appeared as a performance standard for land development in the Draft Ventura Permit and in the Draft Tentative Order. This new requirement for land development is inappropriately establishing a watershed assessment metric as a site specific performance standard. The City believes that although this standard may be appropriate in regions where there is the potential of large new developments, the City of Costa Mesa is an urbanized area that has little new development, but rather significant in-fill and redevelopment projects. These areas are subject to various development standards that encourage high-density

development and a 5% or less effective impervious area may not be feasible or appropriate in certain situations. Additionally, soil conditions within the City may not allow for percolation which continues to be a method of choice in the Low Impact Development (LID) models suggested. These factors, in addition to a flat topography, limited space for detention/retention of stormwater and aging infrastructure system continue to provide significant challenges with land development projects in Costa Mesa. The City suggests that many of the various other approaches that provide proven results in reducing flow be considered as part of this Draft Tentative Order.

The City appreciates your and the Regional Board staff efforts devoted to the development of the fourth term permit for the Orange County Stormwater Program, and looks forward to meeting with you and your staff to resolve the City's concerns regarding the Draft Tentative Order to insure that it meets our mutual goals.

Thank you for your attention to our comments. Please direct any questions to Patrick Bauer at (714) 754-5633 or myself, at (714) 754-5335.

Sincerely,

A handwritten signature in black ink, appearing to read 'EM', with a stylized flourish at the end.

Ernesto Muñoz, P.E.
City Engineer

c: Allan L. Roeder, City Manager
Peter Naghavi, Director, Public Services Department
Don Lamm, Director, Development Services Department
Patrick Bauer, Associate Engineer