

Construction Industry Coalition on Water Quality

February 13, 2015

Mr. Adam Fischer
Santa Ana Regional Water Quality Control Board
3737 Main Street, Suite 500
Riverside, CA 92501

Via Email: adam.fischer@waterboards.ca.gov

RE: Comments on Draft Orange County Municipal Separate Storm Sewer System (“MS4”) Permit, NPDES Permit No. CAS61080

Dear Mr. Fischer:

The Construction Industry Coalition on Water Quality (CICWQ) is submitting comments concerning the Draft Orange County Municipal Separate Storm Sewer System (“MS4”) Permit, NPDES Permit No. CAS61080 (herein referred to as Draft Permit). We are submitting this letter on behalf of the CICWQ membership, which is described below.

CICWQ is an advocacy, education, and research 501(c)(6) non-profit group of trade associations representing builders and trade contractors, home builders, labor unions, landowners, and project developers. The CICWQ membership is comprised of members of four construction and building industry trade associations in southern California: The Associated General Contractors of California, Building Industry Association of Southern California, Engineering Contractors Association, and Southern California Contractors Association, as well as the United Contractors located in San Ramon. Collectively, members of these associations build a significant portion of the transportation, public and private infrastructure, and commercial and residential land development projects in California.

In preparing this comment letter, we draw from many years of our members’ collective experience working both on public infrastructure and facilities, and private commercial, industrial, and residential development projects in Orange County that are governed by NPDES permits issued by the Santa Ana Regional Water Quality Control Board (Regional Board).

As you know, CICWQ and our affiliated trade associations including Building Industry Association of Southern California, Orange County Chapter and Building Industry Legal Defense Foundation submitted comments on earlier permit drafts and participated in workshops. We appreciate the Regional Board’s consideration of our input, and we note positive changes have been made in the Draft Permit regarding the planning and land development requirements affecting CICWQ’s membership.

At this time, however, we remain concerned about the lack of permit language clarity and clear process description for those priority projects which may have available for use an “off-site” pathway for compliance with the on-site retention standard for water quality treatment control and hydromodification control, where required. We see no clear language that equates on-site compliance with that of using an off-site project or a sub-regional/regional facility for compliance with WQMP requirements. We ask that these two options be made co-equal, and clearly stated in the permit. We believe introducing clear permit language regarding on- and off-site compliance with WQMP requirements would greatly clarify the permit’s intent and procedures. Clarity in permit requirements would also potentially facilitate broader adoption of these types of multi-benefit regional approaches—regulatory certainty for participating development projects is crucial for projects to provide the funding necessary to get regional projects started and completed.

As we understand the process now described in Draft Permit Section XII., New Development (Including Significant Redevelopment) subsections F to K, it is not clear whether a project proponent (who could take advantage of an off-site project or sub-regional/regional facility) would first need to perform a hierarchical engineering feasibility analysis described in Section XII. subsections F to I, including the new requirement to analyze retrofit of existing development, and then either seek a waiver as described in Section L. Waiver of Structural Treatment Control BMPs and Credit Programs, or direct a portion or all of the design capture volume to and participate in a regional or sub-regional facility subject to the conditions described in Section K. Off-site Structural Treatment Control BMPs: Regional and Sub-Regional Facilities. Please note there are some subsection letter heading inconsistencies and redundancies in Section XII.

We understand that the Regional Board’s intent is to allow qualifying off-site or regional BMPs to be used as a co-equal pathway to on-site BMPs, provided that the selection and design of these facilities follows the same hierarchical engineering analysis (i.e., retain then biotreat, and so on) and we believe this is a reasonable approach. However, requiring a project proponent to perform an engineering feasibility analysis of on-site retention when an appropriately approved off-site or regional project is available to the project at the time of occupancy is not reasonable, and we do not believe it is the Regional Board’s intent to do so. We suggest that a minor adjustment of language could provide the clarity that is needed. In the Draft Permit currently, direction to a project proponent seeking to use an off-site project or sub-regional/regional facility is given in XII. H.5:

“If a project proponent does not propose to use any LID BMPs on-site and a regional or sub-regional off-site LID BMP, that meets the requirements in Section XII.K. below, is planned to serve the project, the Co-permittees may require the use of the regional or sub-regional facility. The Co-permittees must require any BMPs that are needed to satisfy pre-treatment requirements for that facility where applicable.”

We suggest the following changes to the Draft Permit language that would clarify the co-equal process and would replace the language currently in XII H.5:

“If a project proponent does not propose to use any LID BMPs on-site and a regional or sub-regional off-site LID BMP project or facility, that meets the requirements in Section XII.K. below, is planned to serve the project, the Co-permittees may ~~require~~ allow the use of the regional or sub-regional facility in lieu of on-site LID BMPs. The Co-permittees must require any BMPs that are needed to satisfy pre-treatment requirements for that facility where applicable.”

We raise this issue with you because we believe, contrary to some of the statements made in the Draft staff Technical Report (see pages 31-34 of 97), that off-site compliance with LID requirements, including regional BMPs, will ultimately become a process that land development projects in Orange County (and perhaps the entire Santa Ana region) use for compliance, especially in urban and built out and constrained dense environments. It is our belief that a number of factors have inhibited the development of such projects/programs, not least of which is the Great Recession, which caused a tremendous slowing of land development and re-development activity in Orange County since the 4th term MS4 permit was adopted in 2009, as well as lack of clarity in the pathways for using regional BMPs as provided in the 4th term permit and the associated Model WQMP.

Furthermore, it is our understanding from discussions with Orange County Public Works (and municipal co-permittees in Orange County) and Orange County Water District, that there are some locations along and adjacent to the Santa Ana River, where regional stormwater capture is feasible and could support stormwater runoff from already developed (and potentially re-developed) areas. These types of sub-regional and regional facilities have broad-based public and private sector support, including the State and Regional Water Boards, US EPA, California Stormwater Quality Association, and our membership, as such projects can assist in meeting receiving water quality protection goals, provide augmentation of regional groundwater supplies, and depending on the location and facility configuration and elements, result in other measurable and quantifiable environmental benefits.

One other area of concern we have with the Draft Permit is the extremely short time frame upon which the County of Orange and co-permittees have to begin requiring projects to comply with the new permit provisions as specified in Section XII. B:

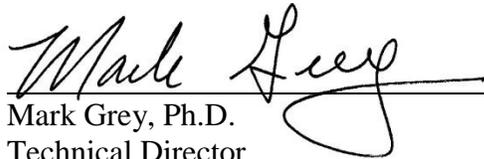
“The requirements of Section XII.B., and subsequent sub-sections of Section XII, apply to initial project applications received by the Co-Permittees beginning 90-days after the effective date of this Order (50-days following adoption) and thereafter.”

It is very important to CICWQ's members that updated technical program documents (e.g. Model WQMP, TDG, WQMP templates, checklists) and training materials are available for project applicants and reviewers in advance of the date at which new permit requirements will go into effect. As written, the County and co-permittees would have approximately 4.5 months to update the program support documents and conduct training. A more realistic period would be a 10 to 12-month implementation schedule, which would allow more opportunity for the County and co-permittees to carefully incorporate the new criteria as well as facilitate an ongoing improvement effort for the overall program documents, as the Draft Permit requires (Section XII.C.5).

In addition to undertaking a well-considered approach for incorporating new permit provisions, the implementation effort could involve obtaining input from CICWQ members and other stakeholders on what has been working and what has not in the last 3.5 years of practice since the current program documents went into effect. Based on this input, revisions and enhancements to program technical documents could go beyond the minimum update needed to comply with the revised permit and could include enhancements that result in more consistent application of requirements and better water quality results. Importantly, it would better allow for training of WQMP preparers and reviewers prior to the effective date.

CICWQ's membership is in the forefront of water quality regulation, providing to water quality regulators practical ideas and solutions that are implementable and that have as their goal clean water outcomes. If you have any questions or would like to discuss the content of our comment letter, please feel free to contact me at (951) 781-7310, ext. 210, (909) 525-0623, cell phone, or mgrey@biasc.org.

Respectfully submitted,



Mark Grey, Ph.D.

Technical Director

Construction Industry Coalition on Water Quality