



San Diego Regional MS4 Permit Environmental Group Testimony

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Low Impact Development



Environmental Services, City of Portland, Oregon/Kevin Robert Perry

Provision E.3.c.(1)(a)(i)

If a Copermittee determines . . . then the Copermittee may allow the Priority Development Project to utilize biofiltration BMPs. Biofiltration BMPs must be ~~sized and~~ designed with an appropriate loading rate to maximize retention and pollution reduction, as well as prevent erosion, channeling and scour, and must be sized to:

[a] Treat 1.5 times the design capture volume not reliably retained onsite; OR

[b] Treat the design capture volume not reliably retained onsite with a flowthru design that has a total volume, including pore spaces and pre-filter detention volume, sized to hold at least 0.75 times the portion of the design capture volume not reliably retained onsite.

~~[c] Have an appropriate loading rate to prevent erosion, scour, and channeling within the BMP.~~

Provision E.3.c.(3)(a)(ix)

~~(ix) Receiving waters must not be utilized to convey untreated storm water runoff from the Priority Development Project to the candidate project;~~

The Clean Water Act



(OC Register)



(LA Times)

Beach Closures

- San Diego County reported nearly 300 closing or advisory days in 2011 from all sources, and Orange County more than 750. Stormwater is the largest cause.
- Depending on the cost model used, for Orange County alone, excess cases of gastrointestinal illness from swimming in bacteria contaminated beachwater cost:
 - between \$6 million and \$16 million per year, or;
 - when willingness to pay *not* to get sick is included, between \$56 million and \$136 million per year.

Impaired Waters



Receiving Water Limitations

“we conclude the Permit’s Water Quality Standards are proper under federal law.”

Building Industry Assoc. of San Diego County v. State Water Resources Control Bd. (2004) 124 Cal.App.4th 866, 880

The Regional Board “included Parts 2.1 and 2.2 in the Permit without a ‘safe harbor.’” These are independently enforceable requirements that prohibit discharges that cause or contribute to a violation of Water Quality Standards.

L.A. County Mun. Storm Water Permit Litigation, No. BS 080548 at 7 (L.A. Super. Ct. March 24, 2005)

Anti-backsliding



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AUG 08 2012

Mr. Jay Sakai, Director
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“Backsliding is prohibited in NPDES permits. . . .
Allowing additional time to complete a task that was
required by the previous permit constitutes a less
stringent condition and violates the prohibition
against anti-backsliding.”

MOA. As further explained herein, EPA believes that several substantive requirements for MS4 permits, as required by the federal Clean Water Act, 33 U.S.C. §§ 1251 *et seq.* (CWA), and its implementing regulations, have not been incorporated into the Prince George’s County permit.

EPA’s objection to the draft permit and identification of revisions needed before EPA can remove the objection, *see* 40 C.F.R. § 123.44(b)(2)(ii), are described below:

1. Water Quality Standards

Federal regulations require that all NPDES permits contain limitations to control discharges which may cause, have the reasonable potential to cause or contribute to an excursion above water quality standards. 40 C.F.R. §122.44(d)(1)(i). Part VI of the draft Prince George’s County permit (Enforcement and Penalties) contains general language

Antidegradation Policy

Protects existing uses and water quality necessary to support existing uses, or, for “high quality” waters, protects water quality better than necessary for “fishable/swimmable” uses.

Water quality may only be lowered in certain limited circumstances. In no case may water quality be lowered to a level which would interfere with existing or designated uses.

See, State Bd. Resolution 68-16,
40 CFR § 131.12

Area of Special Biological Significance

ASBS



