



January 10, 2013

Wayne Chiu, P.E.
California Regional Water Quality Control Board, San Diego region
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4340
(submitted electronically to wchiu@waterboards.ca.gov)

Subject: Comment - Tentative Order No. R9-2013-0001, Regional MS4 Permit, Place ID: 786088Wchiu.

Dear Mr. Chiu:

First, we would like to acknowledge the work that the Board staff has already accomplished through the focused work group efforts during the fall. Significant progress has been made on the Draft Permit from the input of co-permittees and NGO's alike since this process began in April 2012. Thank you.

That said, it was also apparent by the amount of testimony over two days at the following Board workshops that there remain significant concerns, many of which we believe can be easily be rectified to clarify and improve the Permit.

Following the Staff work sessions, we have spent a tremendous amount of additional time trying to explain our concerns at the Board workshops and work with our fellow permittees and co-permittees to develop comments and provide redline recommendations for the Permit language. Please review the comments and recommendations in writing that have been submitted on our behalf by the County of Orange, and which we support in great part.

Although it may first appear voluminous, the County of Orange redline recommendations should make for easy adjustment provided you concur with the justification and support that is presented. We have been working with these Permits now for many years and understand the importance of having carefully crafted language to allow for consistent implementation.

All of the issues that the Orange County letter raises reflect our concerns. However, we will add a few comments here on several selected issues to reinforce those comments from our own City's perspective.

For the hydromodification provision, please include the Engineered Channel Exemption (E3c2dii). While there may be a few locations upstream where reestablishment of a soft walled meandering stream may be technically & economically feasible, those locations are a small minority of the existing hard walled flood control channel system. As a suggestion to allow for that restoration possibility, you may want to reinstate the exemption, "Discharges storm water runoff into conveyance channels that are engineered for the capacity to convey the 10-year ultimate build out condition flow and are regularly maintained to ensure flow capacity all the

way from the point of discharge to water storage reservoirs, lakes, enclosed embayments, or the Pacific Ocean; except where the responsible flood control agency agrees with the likely feasibility of the proposed natural reestablishment and the long range goal is reflected in the approved WQIP." Although charging an in lieu fee to do other water quality improvements is a nice idea, it just won't stand up to legal challenge without a nexus. We feel it is important for the Permit to include justified requirements that are not subject to legal battles so as to not diminish the integrity of the program as a whole.

While we appreciate the intent of requiring roadwork to meet priority development standards, it must be restricted to new development (E.B.2g). In many cases, introducing water into the subgrade of street and gutter projects will be infeasible.

Our single biggest annual capital expenditure is street repair projects. The feasibility and cost to meet the draft imposed requirements could add 10% to 100% additional cost for these projects. This single requirement could exceed all the annual funding the City currently puts toward Water Quality Improvement. While it may be feasible to add these requirements to new development it is not appropriate for redevelopment and repair. Please allow EPA Green Street guidance to suffice as other NPDES permits do.

Please insert the TMDLs as originally written and intended. The municipalities and the SDRWQCB spent years developing the TMDL technical documents and approving them as part of the associated Basin Plan Amendment. As briefed by Nancy Palmer and carefully explained in the Orange County comments this is critical for both the Beaches and Creek TMDL, affecting the entire San Diego Region and Baby Beach TMDL. TMDLs by definition are based upon load, not concentration, and please include the necessary reopener provision(s).

The provisions requiring the development and implementation of a Water Quality Improvement Plan can be better aligned with the Jurisdictional Runoff Management Program requirements so that the programs are complimentary and prioritized instead of additive. We believe this is your intent, but the Draft Permit, as written, is unclear and open to conflicting interpretation at this time.

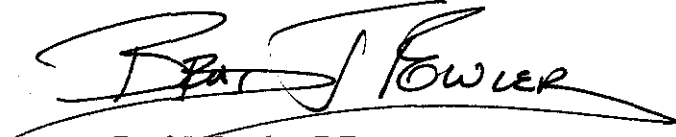
The City also underwent an audit of three key components of the current NPDES MS4 Permit in June of 2012, specifically covering the over-irrigation prohibition, the IC/ID Detection, and the NAL program elements. Although we have not received any feedback regarding the outcome of the audit beyond the debrief that occurred at the end of the audit (which appeared to be positive), we wanted to mention it to ensure that any potentially helpful information obtained was not overlooked in this process.

Again, I would like to emphasize there are many more critical issues contained in Orange County's response letter (attached via reference). We believe that while well intended, some of the draft provisions exceed the Federal Clean Water Act MS4 regulations. Given the potential for third party lawsuits, these are of great concern to our elected officials representing our constituency. As a beach city we are strongly committed to improving water quality. We can still accomplish that progressively with the modifications the County has recommended.

Again, thank you for your past efforts and for continuing consideration of our remaining concerns. The City would like to request the opportunity to meet with you, other Regional Board staff and the County of Orange to review in detail the changes requested in the County letter. Perhaps including the other Counties in the meeting to resolve language issues would be good as well.

Please direct any questions regarding this letter to myself at (949) 248-3582.

Yours sincerely,



Brad J. Fowler, P.E.
Director of Public Works

Attachment via reference: Comments/Redline submitted by the County of Orange

- CC:
- Douglas Chotkevys, City Manager
 - Richard Montevideo, City Attorney
 - Dana Point OWQ Subcommittee Members
 - Lisa Zawaski, City of Dana Point
 - Mary Ann Skorpanich, County of Orange