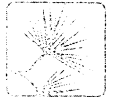




City of Del Mar



January 11, 2013

Mr. Wayne Chiu, P.E.
California Regional Water Quality Control Board, San Diego Region
9174 Sky Park Court, Suite 100
San Diego, California 92123-4340

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

Dear Mr. Chiu:

The City of Del Mar would like to take the opportunity to provide written comments for Tentative Order R9-2013-0001. As stated in previous correspondence, the City appreciates the Order reissuance process to date. The process has allowed stakeholders to participate in shaping the Tentative Order by providing ideas and concepts that support an MS4 Permit that moves us towards our goal – improved water quality and receiving water conditions.

The City of Del Mar has participated in the process for development of the San Diego County Regional Copermittees' comments. Those comments, including an electronic version of recommended changes (e.g., redline/strikeouts), are to be submitted under separate cover by the County of San Diego on behalf of the San Diego County Regional Copermittees. The City of Del Mar supports the comprehensive comments and recommended edits to the Tentative Order.

In addition to supporting the comprehensive comments noted above, the City of Del Mar is providing two specific comments related to Attachment E (provisions for TMDLs) and applicability of hydromodification requirements.

Attachment E – Specific Provisions for Total Maximum Daily Loads Applicable to Order No. R9-2013-0001

The Bacteria TMDL¹ states that for watersheds where there are no longer any impairments listed on the 2008 303(d) List (for REC-1 water quality standards), the Phase I MS4s are not required to submit a load reduction plan and are not subject to any further action under the TMDL as long as monitoring continues to support compliance with REC-1 water quality standards. However, if the impairment returns for REC-1 water quality standards, the Responsible Parties will be required to submit a load reduction plan to the RWQCB.

The City of Del Mar and other Responsible Parties in the San Dieguito and Los Peñasquitos watersheds demonstrated to the RWQCB that the two watersheds are within this scenario where the Pacific Ocean Shoreline of the two watersheds are no longer listed as impaired for indicator bacteria under REC-1 water quality standards. The Responsible Copermittees received written confirmation that they are “not subject to further action under Resolution No. R9-2010-0001 as long as monitoring data continues

¹ Revised TMDL for Indicator Bacteria, Project I – Twenty Beaches and Creeks in the San Diego Region (Including Tecolote Creek) adopted by SDRWQCB Resolution No. R9-2010-0001



to support compliance with the REC-1 water quality standards.” This scenario essentially places our two watersheds in a *dormant* TMDL condition, unless the Pacific Ocean shoreline of the one or both of the watersheds are relisted on future 303(d) lists for indicator bacteria².

Attachment E, Section 6³ of the Tentative Order requires, amongst other provisions, the compliance with Water Quality Based Effluent Limitations (WQBELs). The WQBELs as described in the Tentative Order are expressed as Receiving Water Limitations, Effluent Limitations and as Best Management Practices requirements. As written, the Responsible Copermittees in the two watersheds are required to meet the listed WQBELs even while under the *dormant* TMDL condition.

There is a conflict between relisting of the Pacific Ocean shoreline and the more strict WQBEL limitations. Relisting of the Pacific Ocean shoreline would be done under the criteria established in the 2004 SWRCB Listing Policy⁴ which allows for a certain number of water quality standard exceedances prior to listing. The WQBEL limitations allow **zero** water quality standard exceedances under dry weather conditions – a much higher bar with which to comply.

If the WQBELs are included in the final adopted Permit, at a minimum, the WQBEL compliance should only apply when the TMDL is in an *active* phase – i.e., the waterbody is impaired and listed on the 303(d) list as specified in the Bacteria TMDL (SDRWQCB Resolution R9-2010-0001). Otherwise, the Copermittees will be required to focus intense resources to address bacteria at the Pacific Ocean shorelines where water quality monitoring has demonstrated that it is not an issue. This ironic paradox would be contradictory to the watershed based adaptive management process where the objective is to focus limited resources on the highest water quality issues.

Comment – Based on the supporting information included in this letter and in SDRWQCB Resolution No. R9-2010-0001, correct the conflict between the Bacteria TMDL and Attachment E of the Tentative Order so that the WQBEL requirements are applicable when the TMDL is in an *active* phase, i.e., the waterbody is impaired and listed on the 303(d) list as specified in the Bacteria TMDL. Implied with correction of this conflict is that watersheds in a *dormant* TMDL condition, i.e., no longer listed as impaired for indicator bacteria under REC-1 water quality standards, are not subject to the WQBEL requirements of Attachment E of the Tentative Order.

Provision E.3.c.(2) Hydromodification Management BMP Requirements

The Tentative Order defines hydromodification as:

The change in the natural watershed hydrologic processes and runoff characteristics (i.e., interception, infiltration, overland flow, and groundwater flow) caused by urbanization or other land use changes that result in increased stream flows and sediment transport. In addition, alteration of stream and river channels, such as stream channelization, concrete lining, installation of dams and water impoundments, and excessive streambank and shoreline erosion are also considered hydromodification, due to their disruption of natural watershed hydrologic processes.

² Page A66 of SDRWQCB Resolution No. R9-2010-0001

³ Attachment E, Section 6 of the Tentative Order is the Specific Provisions for Total Maximum Daily Loads Applicable to Order R9-2013-0001 for the Revised TMDL for Indicator Bacteria, Project I – Twenty Beaches and Creeks in the San Diego Region (Including Tecolote Creek)

⁴ State Water Resources Control Board – Water Quality Control Policy for Developing California’s Clean Water Act Section 303(d) List, adopted September 2004

The Tentative Order requires that priority development projects, including redevelopment projects, are required to control post-project runoff flow rates and durations so as not to result in increased potential for erosion, or degraded instream habitat conditions downstream of the projects. There are several explicit exemptions for these requirements identified in the Tentative Order. However, these exemptions are not inclusive of many of the exemptions identified in the San Diego Regional Copermittees Final Hydromodification Management Plan⁵ (HMP). The exemptions identified in the HMP include, but are not limited to, projects that discharges to an exempt river reach, or a tidally-influenced area and other areas where there was little or no increased potential for erosion, or degraded instream habitat conditions downstream of the projects.

Over 95% of the City of Del Mar's MS4 system drains directly to either the Pacific Ocean or to tidally influenced areas of the San Dieguito estuary and river. The areas that drain to the Pacific Ocean will remain exempt per the Tentative Order, however, those areas that drain to tidally influenced areas of the San Dieguito estuary and river will not be exempt even though they have no Hydromodification impacts. The City will be forced to require priority development projects to mitigate for impacts they will not have, e.g., mitigation with no nexus to impacts.

Comment – Based on the definition of hydromodification, correct the hydromodification management requirements in the Tentative Order to be applicable for project sites that have the potential to create hydromodification impacts downstream of the project sites. At a minimum, this can be achieved by reinstating appropriate exemptions in the Order requirements.

The City looks forward to continuing our dialog with Regional Water Quality Control Board staff during the next phases of the permit reissuance process. If you have any questions, please contact me at (619) 994-7074.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mikhail Ogawa', with a long horizontal flourish extending to the right.

Mikhail Ogawa, P.E.
Clean Water Manager

c: Kathleen A. Garcia, Planning and Community Development Director
File

⁵ Approved on July 14, 2010 by San Diego RWQCB Resolution No. 2010-0066