



City of Mission Viejo

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September 28, 2009

By E-mail and U.S. Mail

John Robertus
Executive Officer
California Regional Water Quality Control Board, San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4340

Subject: Comment Letter on Tentative Order No. R9-2009-0002 - NPDES No. CAS0108740

Dear Mr. Robertus:

The City of Mission Viejo is in receipt of the August 12, 2009 Waste Discharge Requirements for Discharges of Runoff from the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watershed of the County of Orange, the Incorporated Cities of Orange County, and the Orange County Flood Control District within the San Diego Region, Tentative Order No. R9-2009-0002, NPDES No. CAS0108740.

The City of Mission Viejo fully supports the County of Orange's comments on this latest iteration of the Tentative Order.

We continue to list our objections to several key areas of the Tentative Order that we feel are inherently problematic, overly costly without evidence of future improvements to storm water quality, and will erode public credibility of the City's Storm Water Program and County's Storm Water Program.

GENERAL COMMENTS

I. Inconsistency with the North Orange County Draft MS4 Permit Especially with Regard to the Land Development Requirements

The City of Mission Viejo continues to express its concerns with the lack of permitting consistency with the North Orange County MS4 Permit (Order R8-2009-0030). We believe the lack of permitting consistency will lead to confusion by private developers, businesses, and residents over storm water regulatory requirements. Specifically, the land development standards for water quality protection should be uniform on a countywide basis to lend credibility to our efforts to manage urban runoff and to sustain the obvious cost effectiveness of a single and coordinated County-wide NPDES Program in Orange County. Therefore, we support the County's comments and suggested language improvements on the Tentative Order to ensure



that it is uniform with the North Orange County MS4 Permit.

II. Inclusion of Effluent Limits

The City of Mission Viejo continues to object to the inclusion of Numeric Effluent Limits (NELs) in the Tentative Order, but appreciates the Board staff's attempt to make the previously proposed Municipal Action Levels (MALs) more palpable by offering the use of Storm Water Action Levels (SWALs). Our main argument to the imposition of NELs are:

- The insertion of NELs is inconsistent with the State Water Board's Blue Ribbon panel report on the feasibility of numeric effluent limits.
- The finding by the Regional Board staff that non-stormwater discharges are not subject to the maximum extent practicable standard and therefore subject to water quality based effluent limits is not supported by law. Clean Water Act section 402(p) (3) (B) (ii) clearly states that discharges from municipal storm sewers shall include a requirement to *effectively* prohibit non-stormwater discharges into the storm sewer. We argue that the section does not require a full prohibition but rather an effective prohibition. The City agrees with the County in that the technology based standard for non-stormwater discharges is "effectively prohibit" just as "maximum extent practicable" is the technology based standard for stormwater discharges.
- The use of numeric limits for non-stormwater discharges is premature and bypasses the Bacteria I TMDL for San Diego Region Beaches and Creeks process. It is likely that some of our non-stormwater discharges will exceed the NEL but have no effect on the receiving water quality or beneficial uses. But under the proposed Order, the City may be obligated to expend considerable resources without a reciprocal water quality benefit. This is poor public policy and use of public funds.

III. Erosion of the Credibility of the Storm Water Program

The prescribed prohibition on irrigation runoff also needs to be very carefully considered. The City believes this outright prohibition would erode general public support for the City's and County's Storm Water Program. We believe implementation of the prohibition would risk eroding general public support for a Program that is successfully fostering a stewardship ethic in residential environments. For example, cities may be faced with issuing citations to a homeowner for irrigation runoff; whereas, the neighbor next door is free to wash his car in his driveway under the current Tentative Order exemption for residential car washing. There is also concern that the provision would force the expenditure of scarce resources on an issue that is already being addressed by water districts dealing with water conservation imperatives. We ask that Section B, Non-Storm Water Discharges, be modified to include landscape irrigation, irrigation water, and lawn watering in Section B.2.

IV. Requirement to Respond to Sanitary Sewer Overflows

Page 73, Part F.4.f., of the Tentative Order states:

“Each Copermittee must implement management measures and procedures to prevent, respond to, contain and clean up all sewage and other spills that may discharge into its MS4 from any source (including private laterals and failing septic systems.) Copermittees must coordinate with spill response teams must prevent entry of spills into the MS4 and contamination of surface water, ground water and soil. Each Copermittee must coordinate spill prevention, containment and response activities throughout all appropriate departments, programs and agencies so that maximum water quality protection is available at all times.”

We continue to object to the inclusion of this provision. The revision of “implement management measures and procedures” being introduced by the Tentative Order to preface the required actions the cities must undertake still leaves the cities responsible for responding to sewage spills. We suggested other language in our May 15, 2009 comment letter that is more appropriate.

As we have previously stated, the City does not own or operate its own sewage system. All of the sewer systems in Mission Viejo are owned, operated, and maintained by water districts. These agencies have their own separate NPDES Permit. The City does not have the equipment or expertise to manage a sewage spill of any size, and its staff is not adequately trained to respond to potential spills. All of the water districts in Mission Viejo already respond to sewer spills (including sewer spills from private laterals). Furthermore, this provision is duplicative in the sense that the Regional Board is seeking to make the Permittees responsible for a task already delegated to the water districts. By making the City responsible for sewer spills, there is a high risk of creating confusion in determining who will respond to a spill (water district or City), who is responsible for the associated cost and reporting, etc.

The “implement management measures and procedures” phase does not negate the previous State Water Resources Control Board Order issuing a stay on this same issue in the prior generation of the NPDES Permit.¹ After extensive hearings and briefing on the matter, the State Board issued Order WQO 2002-0014 on August 15, 2002, granting a stay as to this provision. In that Order, the State Board held:

“The record shows that three separate water districts operate these sewers within Mission Viejo, and are regulated by a sanitary sewer NPDES permit issued by the Regional Board. Mission Viejo alleged that the duplication of effort that would ensue by having Mission Viejo also be responsible for preventing and responding to sanitary sewage spills could lead to delayed responses as agencies try to determine jurisdiction and primary responsibility. Orange County’s cost table for the upcoming year estimated total copermittee costs of \$56,512 to implement this requirement. While these costs, by themselves do not constitute substantial harm, we find that the duplicative nature of the costs, combined with potential response delay and confusion, do.”
(State Board Order WQO 2002-0014, p. 6.)

¹ The requirement for Permittees to regulate sanitary sewer discharges was initially adopted as provision F.5.f. in the prior NPDES Permit.

In deciding to grant a stay as to this provision, the State Board concluded:

“The regulation of sanitary sewer overflows by municipal storm water entities, while other public entities are already charged with that responsibility in separate NPDES permits, may result in significant confusion and unnecessary control activities. For example, the Permit appears to assign primary spill prevention and response coordination authority to the copermitees. While the federal regulations clearly assign some spill prevention and response duties to the copermitees, we find that the extent of these duties is a substantial question of law and fact.”

[State Board Order WQO 2002-0014, p. 8. (emphasis added.)]

Given the previous findings of the State Board on this same issue, and given that none of the factual reasons supporting this decision have changed, the Regional Board should remove this provision so as to reduce duplicity of effort and the implementation of unnecessary control activities.

We once again, as an alternative, offer that the Regional Board consider adopting language similar to that contained in State Board Order No. 2006-0003 titled: “Statewide General Waste Discharge Requirements for Sanitary Sewer Systems” (“Order”). This Order applies solely to municipalities and other public entities that own or operate sanitary sewer systems greater than one mile in length that collect and/or convey untreated or partially treated wastewater. Adopting this caveat would not only serve to accomplish the primary goals behind the provision, but would also ensure Statewide consistency among Water Board regulations.

In conclusion, the City appreciates the effort that Regional Board staff has devoted to the development of the fourth term permit for the Orange County Stormwater Program; however, we believe it is imperative that our concerns are addressed.

Thank you for your attention to our comments. Please contact Joe Ames at (949) 470-8419 or me at (949) 470-3079 with any questions on this letter.

Sincerely,



Rich Schlesinger, P.E.
City Engineer

cc: Dennis Wilberg, City Manager
William P. Curley, III, City Attorney
Mark Chagnon, Director of Public Works
Joe Ames, Associate Civil Engineer
Deborah Carson, Program Engineer