



## CITY of LAGUNA NIGUEL

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## CITY COUNCIL

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April 4, 2007

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

**RE: DRAFT MUNICIPAL STORM WATER PERMIT FOR SOUTH ORANGE  
COUNTY – TENTATIVE ORDER NO. R9-2007-0002**

Dear Mr. Robertus:

The City of Laguna Niguel appreciates the opportunity to comment on the Draft Municipal Storm Water Permit for South Orange County (Tentative Order No. R9-2007-0002). The Laguna Niguel City Council considered the provisions of the Draft Permit at its regular meeting of April 3, 2007. After review and discussion, the City Council authorized City Staff to submit the comments set forth herein.

**City Concurrence with Comments submitted by the County of Orange as Lead Permittee**

The City has reviewed the legal, technical and monitoring comments to be submitted by the County of Orange as Lead Permittee. The City concurs with the County's comments, concerns and recommended deletions and modifications to the Draft Permit.

**General Comments and Areas of Concern**

**The Draft Permit is Overly Prescriptive**

The current Storm Water Permit for South Orange County (Order No. R9-2002-0001) imposed a very comprehensive and prescriptive set of storm water management and regulatory requirements on the City of Laguna Niguel and the other Co-Permittees. The Draft Permit substantially expands the requirements and prescriptions of the Current Permit without clear or compelling supportive findings, evidence or rationale. As a general comment, the City believes that the Draft Permit is too prescriptive and limits the discretion and flexibility of the City to implement storm water management programs and practices that are appropriate, sensible and practical for our community. The City requests that the Regional Board carefully review and reconsider the new requirements of the Draft Permit. Wherever possible, maximum storm water management and program discretion and flexibility should be left to the Co-Permittees.

### Prohibition of Structural Treatment Facilities in Waters of the U.S.

The City is very concerned about Section E (Statutory and Regulatory Considerations), Subsection 7 (Page 14 of the Tentative Order) which essentially prohibits the placement of structural treatment systems or facilities within waters of the U.S. First, this prohibition rekindles reasonable debate over where the “MS4 begins and ends” and what constitutes “waters of the U.S.” Second, there appears to be legal disagreement over whether the Clean Water Act really prohibits the placement of such treatment facilities within or near waters of the U.S. The City’s concerns are more practically focused. In our opinion, the strategic placement and operation of such treatment systems offers the most promising and practical opportunity to actually improve water quality and support beneficial uses. We are concerned that if such a prohibition had previously been in effect, temporary structural treatment facilities (i.e. Laguna Niguel J03P02 Ultra-Violet Treatment System) and permanent structural treatment facilities (i.e. Dana Point Salt Creek Ozone Treatment Facility) would not have been permitted. If such a prohibition is placed in effect, we are concerned that it will have a significant adverse impact on current plans by the County of Orange and the Co-Permittees to address longstanding bacteria pollution issues and prospective TMDL requirements in the Aliso Creek Watershed. Such a prohibition would also stand in direct conflict with prior State-grant supported projects that were endorsed and supported by the Regional Board and Staff. We strongly urge the Regional Board to delete this proposed prohibition.

### Additional Reports, Studies, Plans, Evaluations, Assessments and Updates

The Draft Report imposes significant new and ongoing requirements to prepare reports, studies, plans, evaluations, assessments and updates. Some requirements are one-time only; others are annual and recurring. Examples include, but are not limited to:

- Revise General Plan
- Review Environmental Review Process
- Update Standard Urban Storm Water Mitigation Plan (SUSMP)
- Update Grading Ordinance
- Revise Jurisdictional Urban Runoff Management Program (JURMP)
- Update of Watershed Urban Runoff Management Program (WURMP)
- Evaluate Flood Control Structures for Retrofit Feasibility
- Revise SUSMP/WQMP to include Hydromodification Criteria for all Priority Development Projects
- Analyze Fiscal Benefits Realized from Implementation of Storm Water Protection Program
- Submit a Municipal Storm Water Funding Business Plan to the Regional Board

As a general comment, the City is concerned that the Permit requirements are becoming increasingly paperwork intensive, burdensome and expensive. Many of the proposed studies, analyses and plans require the engagement of professional consultants at considerable expense to the Co-Permittees. From a practical standpoint, the allocation of funds for consultants and studies limits the availability of funds for water quality

programs and projects. The City is particularly concerned about the proposed requirements for: (1) An annual analysis of the fiscal benefits realized from the implementation of the storm water program; and (2) The submittal of a Municipal Storm Water Funding Business Plan to the Regional Board. As a practical matter, it is difficult to contemplate how a Co-Permittee would qualitatively or quantitatively analyze the fiscal benefits associated with the local storm water program; presumably, this would require a highly complex and expensive analysis by economic consultants. It is possible that such an analysis, if performed, would identify negative fiscal benefits in such areas as housing affordability, cost of new development, and alternative municipal priorities, projects and services forgone. The requirement to perform such an analysis every year is excessive. Similarly, the proposed requirement to submit a Municipal Storm Water Funding Business Plan to the Regional Board seems excessive and unnecessary. The Co-Permittees are currently required to report on their current and proposed funding sources to carry out the Storm Water Permit Program. The City urges the Regional Board to delete these two proposed new requirements. The City also urges the Regional Board to carefully review and reconsider all of the Permit requirements related to reports, studies, plans, evaluations, assessments and updates. Wherever possible, these requirements should be minimized so that financial resources may be more appropriately directed to water quality programs and projects.

### **Specific Comments and Areas of Concern**

#### ***D.1.h. – Requirements for Hydromodification and Downstream Erosion***

This section imposes a significant new requirement on Priority Development Projects on a case-by-case or site-by-site basis. It is unclear how far downstream the hydrologic impacts of a new development must be evaluated. This section seems to permit implementation of in-stream controls which is in direct conflict with other provisions of the Draft Permit. It also seems to discourage watershed-based or regional approaches to the problems of erosion and stream slope undercutting. It is requested that this section be deleted, modified or clarified.

#### ***D.3.a.(4) – BMP Implementation for Flood Control Structures***

This section imposes a requirement to evaluate existing flood control devices, identify devices causing or contributing to a condition of pollution, identify measures to reduce or eliminate the structure's effect on pollution and evaluate the feasibility of retrofitting the structural flood control device. This section lacks definition and clarity. What is considered a flood control device? How do flood control devices cause or contribute to pollution? What are examples of retrofitting a structural flood control device? It is requested that this section be deleted or clarified.

#### ***D.3.b.(3) – BMP Implementation for Mobile Businesses***

This section imposes a requirement to develop and implement a program to reduce the discharge of pollutants from mobile businesses to the MEP. The City of Laguna Niguel

does not have a business license or registration program. As such, our ability to identify such businesses and implement an effective program is limited. Such businesses, by their very nature, do not limit their services to an individual city, but generally serve a larger area. The development and administration of a Mobile Business Program is better suited to a countywide or regional approach. It is requested that this section be deleted or modified.

D.3.c.(5) – Common Interest Areas (CIA)/Homeowner Association (HOA) Areas

This section imposes a requirement to implement urban runoff management measures specific to common interest developments, including areas managed by associations. This section also lists general factors to be considered in implementing appropriate management measures. The intent and scope of this section is not clear. It is requested that this section be deleted or clarified.

F.1.c. – Annual Analysis of Fiscal Benefits of Storm Water Program

F.3. – Municipal Storm Water Funding Business Plan

As mentioned above, the City urges the Regional Board to delete these new provisions.

**Conclusion**

The City of Laguna Niguel has made an extraordinary good faith effort to implement the provisions and requirements of the current South Orange County Municipal Storm Water Permit. With the encouragement and support of the Regional Board and Staff, the City has been a leader in the implementation of several significant water quality improvement projects including:

- JO3P02 Ultra-Violet Treatment Demonstration Project
- Wetland Capture and Treatment Network (WetCAT)
- Middle Sulphur Creek Restoration Project
- Upper Sulphur Creek Ecosystem Restoration Project (City/ACOE/DWR)
- Sulphur Solution Project
- Integrated Regional Water Management Plan
- SmarTimer/Edgescape Evaluation Project

The City remains committed to sustaining our current Storm Water Management Program and enhancing our efforts where reasonable and practical. This letter sets forth our most significant comments and concerns about the Draft Municipal Storm Water Permit for South Orange County. We appreciate the opportunity to submit these comments, and we respectfully request that our comments be fully considered by the Regional Board and Staff.

Yours truly,



Tim Casey  
City Manager

Cc: Mayor and City Council  
City Attorney  
Director of Public Works/City Engineer  
Director of Community Development  
Senior Water Quality Manager  
South Orange County Co-Permittees