

December 8, 2009

Mr. Ben Neill
San Diego Regional Water Quality Control Board
9174 Sky Park Court, Suite 100
San Diego, California 92123-4353

Dear Mr. Neill:

Re: Comment Letter – Revised Tentative Order
R9-2009-0002, NPDES No. CAS0108740,
Orange County Municipal Separate Storm
Sewer System Permit Reissuance

The Riverside County Flood Control and Water Conservation District (District) appreciates the opportunity to submit additional comments on the above listed Revised Tentative Order issued to the MS4 Permittees in south Orange County (Draft Permit). The District serves as Principal Permittee for the MS4 Permit issued by the San Diego Regional Board that covers the portion of Riverside County that is within the Santa Margarita Watershed (Board Order R9-2004-0001).

The Permittees support the elimination of Numeric Effluent Limits from the Board Order. Nevertheless, the proposed language that incorporates Non-storm Water Dry Weather Action Levels (NALs) could be further improved to ensure that the Permittees' programs to manage/minimize dry weather flows are implemented in a more effective manner, particular in consideration of the Permittees' overall stormwater management programs.

1. Discharge prohibitions and modifications to high-priority pollutant lists based on single a NAL exceedance are inappropriate.

Although it may be appropriate to immediately investigate the source of an NAL exceedance and, when appropriate, take enforcement actions, Provisions C.2.c and C.2.e set forth requirements that will require the Permittees to definitive and permanent actions based on a single NAL exceedance. The example scenarios below demonstrate why this single exceedance approach does not make sense. Given the long-term social and public costs of implementing such programmatic revisions, this level of immediate and permanent response to a single event is disproportionate and inappropriate. In contrast, even the Water Board's 303(d) listing policy recognizes that a single water quality sample is statistically insignificant. Determinations regarding whether to prohibit allowable discharges, or take other substantive actions, should be based on statistically significant data sets that indicate problems that are of significant magnitude, duration and frequency to warrant such actions.

As an example, if a resident in south Orange County is washing a car, and in the process carelessly and excessively uses an engine degreaser, it is conceivable that the discharge from this single occurrence could exceed an NAL. Instead of simply addressing the behavior of this individual polluter, provision C.2.c would be require the Permittees to prohibit all residential car washing, for all 500,000 south OC residents, forever - all based on that single event.

This scenario is also problematic in provision C.2.e. Pursuant to this provision, if the pollutant source cannot be found, a single exceedance requires the Permittee to develop and implement entirely new programs - and possibly initiate retrofit projects to address that pollutant even though

it may have resulted from a one-time discharge. For example, if an errant homeowner completing a renovation project dumps solvent into a storm drain inlet and causes an exceedance, the public will be required to expend significant time and resources creating and implementing programs to address an issue that has no history of being a problem and where there is no expectation that it will continue to be a problem.

It is clearly not appropriate, and is a waste of public resources to be revising programs and/or prohibiting entire categories of discharges based on single exceedances. A robust and effective program to address non-stormwater discharges should evolve with time based on data that has a greater level of statistical significance. Further, the receiving waters limitations already include procedures to address these sorts of exceedances. Additional duplicative program requirements are inconsistent with the intent of the receiving waters limitations and present potentially conflicting requirements within the Board Order.

2. **Provision C.2.a - Impossible Scenario**

Provision C.2.a discusses actions that must be taken in response to an NAL exceedance that is determined to be natural in source *and conveyance*. Since NAL monitoring would only occur at MS4 outfalls, any flows causing an NAL exceedance are by definition not natural in conveyance. As written, Provision C.2.a can only apply to MS4 discharges and, thus, there are no practicable alternatives available for NAL exceedances that may be caused by natural background levels of constituents.

3. **Provision C.2.c - Potential requirement to prohibit natural sources**

As discussed above, provision C.2.a does not provide a feasible option for dealing with natural sources; therefore, many natural sources will fall under the purview of Provision C.2.c. Under this provision, an NAL exceedance caused by a currently exempted discharge must result in the Permittee prohibiting the entire category of discharge. Many of these currently exempted discharges (defined in Provision B.2) are natural in origin such as:

- Diverted Stream Flows
- Rising Ground Waters
- Springs
- Flows from riparian habitats and wetlands

Thus, provision C.2.c would require the Permittees to prohibit these categories of natural sources (if they cause an NAL exceedance). This is in direct contradiction with Regional Board staff's statement that they do not intend to require Permittees to regulate natural sources. Further, MS4 Permittees have no means by which to prohibit these natural discharges and, as such, this provision would put the Permittees in unavoidable non-compliance with the Permit.

4. **Provision C.2e - NAL exceedances versus programmatic response**

If the source of any single NAL exceedance is not identifiable, provision C.2.e requires the Permittees to perform additional monitoring and revise their programs to identify and address that constituent as a high priority pollutant of concern. In addition to the single-sample discussion above, not all constituents on the NAL list can be addressed through a specific program or targeted action. For example, if the NAL for pH is exceeded and no source is found, there is no specific action the Permittees can take to address this; i.e., there are no BMPs that effectively treat pH.

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Closing

In closing, we would like to thank you for the continued opportunity to comment on the draft South OC MS4 Permit and appreciate your consideration regarding the important concerns described herein. The Riverside County Permittees reiterate their request made in the ROWD submitted in January 2009 that the next Riverside County MS4 Permit be structured and based on our existing permit and that any expansion of compliance requirements be limited and support our efforts to improve the effectiveness of existing compliance programs in addressing specifically identified water quality impairments. We appreciate your consideration of our comments and look forward to meeting with Regional Board staff in the development of a MS4 permit specific to Riverside County. If you have any questions regarding these comments, please contact me at 951.955.1273.

Very truly yours,

JASON UHLEY
Engineering Project Manager

ec: Riverside County Management Steering Committee
David Huff, Deputy County Counsel

CP:cw
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