

# California Regional Water Quality Control Board, San Diego Region

## Regional MS4 Permit RWQCB Workshop

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### *Meeting Notes*

Date	Location	Agenda Topics
9/5/2012 Start time: 9:30 AM End time: 10:30 AM	San Diego Water Board Board Meeting Room 9174 Sky Park Ct., Ste 100 San Diego, CA 92123-4340	<ul style="list-style-type: none"><li>• Opening Remarks</li><li>• Focused Meeting Outcomes</li><li>• Regional MS4 Permit Tentative Order and Adoption</li><li>• Comments and Questions</li><li>• Closing Remarks</li></ul>

#### **I. Welcome**

Joan Isaacson (Facilitator) welcomed everyone to the Regional Water Quality Control Board (RWQCB) Workshop. This is the wrap up of the focused meeting process that was held by the San Diego RWQCB for the MS4 administrative draft permit process. The RWQCB has been conducting this enhanced stakeholder involvement process to obtain early and substantive input, and it has been an innovative process that has been successful in order to fine tune the content of the MS4 permit. In this morning's workshop, the RWQCB will explain more about the stakeholder involvement process as well as some of the key topics that are going to receive additional consideration by the project team. In terms of the objectives of the workshop this morning, for the project team this has been a very productive process in hearing concerns and issues from the stakeholders. Today they will report back what they've been hearing in the stakeholder process and also continue the dialogue in hearing more of the stakeholders' comments and questions on the administrative draft permit.

Joan gave an overview of the agenda and provided some notes on the comment and question section. There will be a meeting summary that is being prepared, but it is really important to the project team to submit comments in writing. There are also ground rules for the discussion portion of the session. Those are designed to make sure that everyone gets a chance to participate and share their perspective, including asking people to limit comments to 2-3 minutes and limit follow-up questions to one per person.

#### **II. Opening Remarks**

David Barker (RWQCB) reiterated that today is the last of the currently scheduled meetings for conceptual discussions on the administrative draft permit that was released for review and comment on April 9, 2012. In determining the structure and format for the focused meetings, RWQCB staff consulted with many of the stakeholders and attempted to

set up an orderly, efficient, and impartial meeting process to review and discuss the permit. One central goal was to provide a fair opportunity for representatives of the key stakeholder groups (the municipal Copermittees, environmental non-governmental organizations, and the development community) so they could participate in the meetings and present their views. The primary goal was seeking the stakeholders' perspectives on how to improve the permit prior to formal review. RWQCB staff wanted to get insight into the chief constraints and limitations that the administrative draft permit presented to the stakeholders. To date, there have been four meetings over the summer (June 27, July 11, July 25, and August 22) to hear the stakeholders' ideas on how RWQCB staff can improve the administrative draft permit. In David's view, these meetings have been a complete success. Last week's HMP workshop, which was an additional meeting, was equally productive. The stakeholders' thoughtful comments and recommendations at these meetings will be closely considered by RWQCB staff as they move to develop the draft permit. RWQCB staff also anticipates they will be receiving substantive written comments by the September 14<sup>th</sup> deadline. All of this will serve as a solid platform for the RWQCB to finalize a markedly improved draft permit that will be released for public review and comment later this year. RWQCB staff is interested in hearing the stakeholders' perspective on the meetings in the comment portion of today's meeting. David thanked all who took the time to prepare for, attend, and participate in the day-long meetings over the summer months. He also thanked those who provided meeting room facilities and thanked having an excellent facilitator.

David also provided an update on the letter previously received from the County of Orange asking fundamental legal questions on the RWQCB's authority for issuing a regional permit and the process for enrollment of Riverside County and Orange County Copermittees that is currently laid out in the administrative draft permit. David indicated that RWQCB Counsel provided a draft response to him late yesterday. The official letter will be sent through the Lyris system this week. The RWQCB Counsel's response is not going to change the RWQCB's direction to have a regional permit, but there may be revisions to the enrollment process. Details will be provided in the final letter.

### **III. Focused Meeting Outcomes**

Laurie Walsh (RWQCB) acknowledged that some people traveled quite a distance to be at this workshop, and she appreciated all those who are in attendance. She also appreciated all the work that was put into the focused meetings. RWQCB staff asked for participation and received it from a majority of stakeholders. The stakeholders provided RWQCB staff with good information to be considered, and the permit writing team learned a lot from the focused meetings and offline meetings with stakeholders. The focused meetings educated the permit writing team on the constraints in complying with the administrative draft permit and brought to light issues and concerns from the non-governmental organizations (NGOs). The focused meetings were an effective exercise in sharing information.

Laurie explained that typically Regional Boards do not distribute drafts of draft permits, but they did in this case because RWQCB staff was interested in stakeholders' input as the

permit changes from a county-wide to a region-wide permitting system. There is a lot of new language and requirements in the administrative draft permit, and RWQCB staff appreciates the feedback received from all the stakeholders.

Laurie presented the topics that resonated with the permit writing team from the input received at the focused meetings. This list is by no means the only issues that RWQCB staff will be addressing with revisions to the permit, but is a short list of what resonated with them throughout the focused meeting process.

**1. Public Review / Transparency**

RWQCB staff wants to better integrate early public input during the development of priorities and strategies in the Water Quality Improvement Plans. They are looking to include stakeholder input early on, when priorities are being set. RWQCB staff believes early stakeholder input would create efficiency, instead of waiting until the end when the Water Quality Improvement Plans are in final draft form to get public input. RWQCB staff believes that making a better plan and having public input on developing strategies and priorities would gain some synergistic benefits. RWQCB staff does want the permit to be more adaptive and more synergistic. By getting everyone involved early on in the process, they expect it will pay dividends in the end.

**2. Adaptive Management Approach**

RWQCB staff wants to provide some clarity in the permit to identify which requirements are subject to adaptation. They would also like to provide clarity as to how the Water Quality Improvement Plans are adaptive and how they link the with jurisdictional program.

**3. Prohibition Provision A**

RWQCB staff will make language in Provision A consistent with language in the Clean Water Act, specifically replacing the phrase “effectively prohibit.”

**4. NALs and SALs**

RWQCB staff will make permit language clear that NALs and SALs are tools to be used to set priorities and assess programs; they are to be used as tools to measure progress towards addressing Water Quality Improvement Plan priorities. Permit language will be revised to clarify that NALs and SALs are not triggers for immediate action and are not enforceable effluent language.

**5. Monitoring**

RWQCB staff will be revamping the monitoring requirements currently in the administrative draft permit. They will seriously consider all proposed changes that are submitted. They were impressed with what the San Diego Copermittees presented and believe they can incorporate that program, as long as it is compatible with the needs and objectives of RWQCB. RWQCB staff admits there is a lot to consider in this section, especially to make sure that monitoring requirements are adaptable. RWQCB staff wants to allow for visual observations to be included as part of monitoring data. RWQCB staff also wants to incorporate and accommodate modeling or statistical based methods as acceptable to determine long-term trend,

rather than just empirical data. They also would like to support the use of third-party data.

#### **6. LID/Hydromodification Design Requirements**

This is another part of the permit where RWQCB staff would like to increase clarity. The Hydromodification Management Workshop was very informative, and Laurie thanked Orange County for coordinating the workshop. RWQCB staff would like to make a shift away from determining what is infeasible onsite to determining what is feasible onsite and offsite where it has the greatest water quality benefits for the watershed. This would allow resources to be put in areas that would produce the greatest benefits.

#### **7. Existing Development Requirements**

In this section, RWQCB staff wants to provide increased flexibility to do inspections based on priorities in the Water Quality Improvement Plans. They would also like to provide clarity on the definition of inspection and streamline the content in inspection reports. For both the commercial and residential sections, RWQCB staff would like to include the option to do inspections based on a management area instead of parcel by parcel.

#### **8. Timing of Deliverables**

RWQCB staff would like to create efficiencies wherever possible between preparation, public review, submittal, and implementation of required deliverables. To do this, the permit writing team will re-evaluate the permit in its entirety. RWQCB staff will also be trying to create efficiencies when it comes to due dates and review schedule durations while also trying to accommodate, where possible, the Copermittees' budget cycles for deliverables and review times.

Laurie concluded that RWQCB staff has been very pleased with the input and ideas shared by all stakeholders at the MS4 Focused Meetings. Also, as mentioned at the April workshop, the RWQCB is asking the Copermittees' storm water programs to mature while at the same time the RWQCB is pushing their regulatory program to grow as well. RWQCB staff looks forward to receiving written comments on or before September 14<sup>th</sup>, 2012. On behalf of the permit writing team, Laurie thanked everyone for the work that they have done, recognizing that there is more process to go.

### **IV. Regional MS4 Permit Tentative Order and Adoption**

Eric Becker (RWQCB) reiterated that written comments are due by September 14<sup>th</sup> at 5 PM. All comments should be directed to Laurie Walsh. Eric informed the stakeholders that the RWQCB e-mail server does have a limit of 10 MB per email. If stakeholders have large documents to submit, they are requested to provide a CD of their comments. Comments will be posted on the website for all to see. Once the deadline for comments has passed, the permit writing team will develop a public draft of the Tentative Order and fact sheet to be issued this Fall. They will also provide a strikeout version of the administrative draft permit. The schedule remains for expected adoption of the permit in the spring of 2013. More

specifics about the schedule, or any changes to the schedule, will be sent to stakeholders through the Lyris email system.

## V. Comments and Questions

Joan Isaacson (Facilitator) reviewed the guidelines for productive discussion, including all perspectives are valued, people are to listen to understand, comments should be focused on issues, to ensure equal participation comments are limited to 2-3 minutes and one follow-up question.

**Comment:** Roger Butow (Clean Water Now! Coalition) asked for clarification that RWQCB staff will not be formally responding to the comments submitted by September 14<sup>th</sup>.

**Response:** RWQCB staff concurred. There will be no formal responses.

**Comment:** Roger Butow (Clean Water Now! Coalition) inquired about effluent dependent water courses and ecosystems, as that topic was not brought up in any of the MS4 Focused Meetings.

**Response:** David Barker (RWQCB) suggested an offline conversation with Roger on this topic.

**Comment:** Ziad Mazboudi (City of San Juan Capistrano) commented on how pleased he was with how the MS4 Focused Meetings went. The meetings were very civil, gave everyone a chance to communicate with each other, even by having lunch sometimes with groups that normally would not meet over lunch. Hearing the comments that are coming back, Ziad is very positive about the progress being made. He acknowledged that the RWQCB and stakeholders have a common goal and that everyone understood that the Copermittees and NGOs need to use the resources available to achieve the common goal. Ziad thanked the RWQCB for reaching out to the stakeholders and is hoping the draft permit will show that the RWQCB is really serious about what they have been telling the stakeholders.

**Comment:** Claudio Padres (Riverside County) noted that the comment period only gives about a week after this wrap-up workshop to polish redline versions and permit comments from the stakeholders. He appreciated the feedback today on the themes that were heard by and resonated with RWQCB staff. He would like to be able to take a chance in his comment letter to respond to that and have the comment letter be geared at recommending how what was stated as takeaway points can be accomplished. He appreciates that the list is not all inclusive of what will be changing with the administrative draft permit. Claudio recognizes that this is an important process and does not want to short change it by not being able to include productive comments based on the hydromodification Workshop and today's wrap-up workshop. He ultimately wants to provide helpful comments and is, therefore, requesting the comment deadline to be moved to the end of September.

**Response:** Laurie Walsh (RWQCB) appreciated Claudio's comment; however, the September 14<sup>th</sup> due date has been published since the release of the Administrative Draft Permit in April of this year. The RWQCB has also communicated that throughout the focused

meetings. Other stakeholders have been preparing strikeout versions of the permit or comment letters as the MS4 Focused Meetings have progressed. The deadline of September 14<sup>th</sup> will remain. Laurie noted that there will still be a public review process after this where input can still be brought to the RWQCB. The majority of the changes will occur now, but that does not mean that more changes cannot occur later. Laurie urged the stakeholders to submit the best comments they can at this point. If there needs to be follow up, then that is okay, but September 14<sup>th</sup> is when the permit writing team is going to take comments and start making changes.

**Comment:** Claudio Padres (Riverside County) noted that the stakeholders are still very much in a difficult situation for time to submit comments and that other requirements already issued under current permits are impacting their ability to provide substantive comments on this administrative draft permit. He hopes that the RWQCB will take that into consideration, and asked, given timelines and importance, what the RWQCB has as a reason for not changing the date for comment submittal.

**Response:** David Barker (RWQCB) reminded the stakeholders that the administrative draft permit has been posted and available for review since April 9, 2012. This is now September, some six months after the initial release. That is a generous review period by anyone's standards. Early on in the MS4 Focused Meetings, it was mentioned that the permit writing team had been directed by the RWQCB Executive Officer to schedule four focused meetings on the administrative draft permit, but also to maintain momentum toward releasing the draft this Fall. It was mentioned early on, and reflected in the meeting minutes, that the schedule would not be extended. David can appreciate concerns about wanting more time to get substantive written comments in, but does not see changing the September 14<sup>th</sup> date or extending it in any way.

**Comment:** Michael McSweeney (Building Industry Association) stated that, theoretically, six months should be plenty of time to submit redlines and comments; however, the primary issues of importance to the BIA and development community were not heard until the August 22<sup>nd</sup> Focused Meeting and the hydromodification Workshop held last week; thereby giving the development community only three and a half weeks to produce their comments. Michael requested an additional two weeks to provide comments, past the September 14<sup>th</sup> deadline. It has been beneficial to work with RWQCB staff, and he feels it is more important to provide two extra weeks for the development community to provide quality comments and redlines to make the permit writing team's job easier so that there are less comments on the next review period.

**Response:** David Barker (RWQCB) acknowledged Michael's request. Following today's wrap-up workshop, David will be meeting with RWQCB Executive Office David Gibson to review what RWQCB staff has gotten out of the MS4 Focused Meetings and Workshop. He will relay Michael and Claudio's requests to David Gibson.

**Comment:** Roger Butow (Clean Water Now! Coalition) concurred with Michael McSweeney. Many NGO stakeholders do not have staff who are paid for their time and effort. The MS4 Focused Meetings have resulted in positive input, but it is still a work in progress and there still is not a clearly defined goal line. Simply because a date has been set

does not mean it cannot be changed. If adaptive management, included in this permit, is to be a flexible process, then the process in developing the permit should also be flexible, including the date for submitting written comments. He urged the RWQCB to reconsider the submittal date.

**Response:** The RWQCB has already addressed this comment. The comment deadline will not be changed.

**Comment:** Jill Witkowski (San Diego Coastkeeper) gave input on the comment deadline. Being a sole practitioner and having to develop comments on her own, she can understand the desire to request more time; however, she supports the RWQCB position to not move the deadline. There is nothing stopping the stakeholders from having quality conversations after September 14<sup>th</sup>. If something is submitted after September 14<sup>th</sup> that is valuable, there is no reason that the permit writing team could not consider it. Jill encouraged the process to move forward. Jill also thanked the RWQCB for setting up this process. Having been involved in several permit processes before that simply allowed a 30-day comment period, this focused meeting approach over several months has been very helpful. Jill then questioned how the RWQCB is going to be sure that the prohibition language in Provision A matches the Clean Water Act.

**Response:** Laurie Walsh (RWQCB) stated that RWQCB staff is going to make sure that the MS4 permit requirements are consistent with the applicable section of the Clean Water Act. In that particular section, there is a one-liner that says "effectively prohibit," so the permit writing team is going to make sure the MS4 permit is consistent with the Clean Water Act.

**Comment:** Julie Precopio (City of Santee) thanked RWQCB staff for meeting with the stakeholders as it has been very helpful. Julie stated that once they submit comments, the comments may or may not make complete sense. She asked if RWQCB staff would be willing to meet with stakeholders going forward to address questions or issues that have been contentious or solutions offered that do not quite meet the permit needs.

**Response:** David Baker (RWQCB) confirmed that RWQCB staff may continue meeting with stakeholders, as they have been throughout this review process. As RWQCB staff receives comments and the comments trigger questions, the staff will reach out to stakeholders to get a better understanding of what the comments are and how to properly address them.

**Comment:** Mike Beanan (South Laguna Civic Association and Laguna Bluebelt) encouraged all participants to recognize and prioritize that this is a regional coastal community. Unfortunately, the coastal receiving waters are last on the list, when they should be closer to the top of priorities. Mike encouraged stakeholders and the RWQCB to keep in mind that all runoff and rivers and streams go to the coast, where all family, friends, and visitors also go. Specifically, Mike asked again to develop coastal plume maps based upon data that has been collected. There has been a multitude of data collected, but it is not in a useable form for the public to understand. That data needs to be presented in a format that the public can easily understand, and it may increase public awareness of water quality problems.

**Comment:** Jon Van Rhyn (San Diego County) thanked the RWQCB on behalf of San Diego County and the San Diego County Copermittees for the approach to the review and comment process so far. He encouraged the stakeholders and RWQCB to continue dialogue. Regarding the residential portion of the permit, he is encouraged to hear support for Residential Management Areas and greater flexibility on the definition of inspection. Jon stated that the San Diego County Copermittees have understood clearly that they need to look closer at residential areas and sources. They recognize that the long-term success of achieving better water quality is tied to residential sources. It is, however, scary to require a residential inspection program, as it can quickly become unmanageable and have the unintended effect of undermining support for programs. The San Diego County Copermittees would like to continue exploring this portion of the permit, and would like to see the element as a prioritization and learning tool instead of strictly an enforcement tool. The primary objective should be on how to better manage residential areas instead of getting out and starting enforcement as the first effort.

**Comment:** Brad Fowler (City of Dana Point) thanked the RWQCB for all the hard work that has been done and time that has been spent on this. He recalled that when the administrative draft permit was first introduced, he had trouble marrying the concept that was presented with the words in the permit. The dialogue along the way has been helpful in trying to see if the wording in the permit can be made to match the RWQCB's goals and concepts. He believes that the concept of Water Quality Improvement Plans is terrific and is absolutely where the City of Dana Point wants to go. The City of Dana Point has been fortunate to be able to clean up a lot of beaches and remove three from the 303(d) listing. At this point, the focus is on the end of San Juan Creek. To be able to prioritize to that extent would be very helpful. The City of Dana Point has spent time working with SCWRRP to understand the causes behind illness and high bacteria counts. Brad believes that this permit will help the City of Dana Point direct their efforts toward the best benefit from a watershed and cost standpoint. When this permit process started, Brad thought that the idea of switching to a region-wide permit would not be wanted; however, he has been encouraged by the efforts made so far and is now leaning toward supporting the new permit because he has seen a significant change in the RWQCB focus. He recognizes that the RWQCB and stakeholders share a common goal to improve water quality. In the past, the mindset has been us versus them. He is encouraged by everyone now working together to prioritize issues in a public way to address problems within budgetary capability. Brad would ask the RWQCB to consider the Ninth Circuit Court decision and consider writing into the permit that this permit is to be taken as a whole, not separately enforceable provisions. He would like the Copermittees to have a chance, when working hard and cooperatively and within an iterative process, to not be subject to constant violations.

**Response:** David Barker (RWQCB) acknowledged that the RWQCB is familiar with the Ninth Circuit Court decision. The issue is on the agenda for discussion between RWQCB Counsel and Copermittees' Counsel. Those discussions will go on. In addition, the State Water Resources Control Board (SWRCB) is having a workshop on that specific topic on November 20, so they are also tracking the issue.

**Comment:** Claudio Padres (Riverside County) also expressed concern with ramifications of the Ninth Circuit Court decision. This is an important decision that could pose a serious problem for adaptive management. If the issue is not addressed, then in some interpretations of the permit language, adaptive management would go away. Copermittees would be expected to focus on everything, everywhere. With the plan to release the draft order this Fall, Claudio asked how that interplays with the November 20<sup>th</sup> SWRCB Workshop. As the issue rose to statewide importance, Claudio would like to see the results of that workshop reflected in the tentative order.

**Response:** David Barker (RWQCB) predicted that resolution of this issue will not occur at the RWQCB level; it will be as a result of a policy setting initiative by the SWRCB. The SWRCB will also be dealing with the issue in the Phase II permit that they will be considering for adoption. David is looking forward to seeing what discussions will happen at the November 20<sup>th</sup> workshop. The RWQCB is aware of the issue and will be consulting with RWQCB Counsel regarding the issue. If it is not fully addressed in the draft tentative permit released for review later this Fall, then it will come up during the course of the formal hearings and will be considered at that time. Eric Becker (RWQCB) added that if the State Water Resources Control Board makes any changes to the language, those changes would be reflected in the draft Tentative MS4 permit.

**Comment:** Richard Boon (Orange County) raised an issue that was discussed at the very first MS4 Focused Meeting but has not been discussed since. For Copermittees that are under multiple permits, Richard asked how those cities, those entities, will be handled with regard to this permit, as several Orange County Copermittees are split between the San Diego and Santa Ana RWQCBs.

**Response:** Wayne Chiu (RWQCB) responded that the Riverside County permit had a similar issue and they were able to reach an arrangement with the Santa Ana RWQCB to have certain jurisdictions fully regulated under one permit. For that to occur, a written request has to be submitted to both RWQCBs, followed by a written response from both RWQCBs outlining the agreed upon arrangement. The San Diego RWQCB is willing to consider that type of arrangement. The question remains as to if the Santa Ana RWQCB is willing to consider it. If both RWQCBs are willing, then it is simply a matter of determining how things would work between the two permits. The Santa Ana RWQCB may have to open up their permit to make adjustments as well.

**Comment:** Mike Beanan (South Laguna Civic Association and Laguna Bluebelt), in regard to synergy and hydromodification, encouraged the development community to look at capturing stormwater particularly as it relates to wildland interface. San Diego is going into fire season again, and wildfires are an annual event. What we are considering to be a problem right now (the excess water, urban runoff, stormwater) could be re-purposed in a synergistic way to radically increase fire protection and emergency water sources. Mike also suggests monetizing the value of that water over time. Most infrastructure systems are capitalized for 30 years; monetizing recycled water over 30 years in a given region or area gets into millions of dollars very quickly. The development community should start looking

at combining a problem with an opportunity. Systems engineering by reputable engineering firms would satisfy that, possibility.

**VI. Closing Comments**

Laurie Walsh (RWQCB) thanked everyone for coming and participating. The RWQCB is waiting for everyone's comments and will then be busy making revisions to the permit. Laurie especially acknowledged Brad Fowler's comment about the change in his perspective, stating that it affirms that the RWQCB has done their job in communicating with the stakeholders. The RWQCB is looking forward to receiving comments by September 14<sup>th</sup> at 5 PM, and RWQCB staff is available by phone or email.

**VII. Meeting Adjourned**