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April 1, 2013

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Wayne Chiu, P.E., Water Resource Control Engineer
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California Regional Water Quality
Control Board, San Diego Region
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San Diego, CA 92123-4353

RE: Revised Tentative Order R9-2013-0001 Published March 26, 2013

Dear Mr. Chiu and Ms. Hagan:

This firm represents members of the Coalition that have participated in the process of the San Diego Regional Water Quality Control Board, Region 9's (RWQCB) development of Revised Tentative Order R9-2013-0001, published March 26, 2013. The Coalition consists of the following trade and professional associations, known as the regulated community: Building Industry Association of San Diego County (BIASD), Business Leadership Alliance (BLA), Associated General Contractors, San Diego (AGC), NAIOP (National Association of Industrial & Office Properties), Associated Builders & Contractors (ABC), the San Diego Regional Chamber of Commerce (SDRRC), the San Diego Association of Realtors® (SDAR), the Alliance for Habitat Conservation, the Building Owners & Managers Association (BOMA), and the San Diego Chapter of the American Society of Landscape Architects. The Coalition respectfully requests that the RWQCB provide additional time to review, consider, and comment upon Revised Tentative Order R9-2013-0001, and postpone the hearing on the Revised Tentative Order currently scheduled for April 10 and 11, 2013.

The Coalition experts and counsel have spent hundreds of hours reviewing and commenting on previous drafts of the permit. The Coalition became aware that the most current version of the permit, consisting of approximately 338 pages, was available for review March 27, 2013, at approximately 4:30 PM. Almost every substantive provision in the draft permit has been substantially revised. Concurrent with the release of this new draft permit, the RWQCB staff released 272 pages of responses to comments dealing with the staff's rationale for revising or not revising almost every substantive portion of the permit. The comment period on the previous draft of the permit closed on January 11, 2013. Thus, at least four RWQCB full-time staff have dedicated the last 69 days to review the comments and consider changes to the permit while the public and RWQCB board members working on a volunteer basis have been allotted just six business days to review over 600 pages of materials and analyze the potential effects of those changes. The Coalition strongly recommends that the RWQCB postpone the public hearing on the draft permit for at least 60 days to allow sufficient time for board members, affected parties, and the public to review and consider the major changes to water quality strategies and regulation envisioned in this permit, and provide comments to the

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RWQCB. This is without doubt a situation that requires a comment period extension. See 40 C.F.R. §124.14(a)(4), (b).

Section 124.14(b) of Title 40 of the Code of Federal Regulations, prescribing decision-making procedures for NPDES permits, provides that, if any data information or arguments submitted during the public comment period appear to raise substantial new questions concerning a permit, the permit writer may prepare a new draft permit, appropriately modified, or may prepare a revised fact sheet and reopen the comment period on the same. With the substantial revisions to the draft permit and changes to the Fact Sheet, this provision requires reopening the comment period. See also 40 C.F.R. §124.10 (requiring notice and at least 30 days for public comment for a draft permit). Water Code section 13167.5 requires that the Regional Water Quality Control Boards provide notice and a period of at least 30 days for public comment prior to the adoption of waste discharge requirements. When a Regional Water Quality Control Board modifies a Water Quality Control Plan, it must comply with the California Administrative Procedure Act, including its notice and recirculation requirements. *State Water Resources Control Board v. Office of Administrative Law* (1993) 12 Cal.App.4th 697. As described above, the RWQCB's release of its modified permit, along with over 200 pages of response to comments regarding the proposed changes, should be considered, in effect, the preparation of a modified draft permit and revised fact sheet, with fewer than two working weeks to review these revisions prior to the meetings at which the RWQCB will consider the Revised Tentative Order for adoption. Under the authority cited above, the release of this modified permit must be accompanied by a corresponding additional comment period on the significantly revised draft Order.

Thank you for considering the Coalition's request. Please let us know at your earliest convenience whether you will allow additional written comments on the revised draft permit, when the deadline for submission of such comments will be, and whether you will postpone a final hearing on adoption of the permit.

Sincerely,



Lisabeth D. Rothman 

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