



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
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San Francisco, CA 94105-3901

APR 24 2013

OFFICE OF THE
REGIONAL ADMINISTRATOR

The Honorable Darrell Issa
U.S. House of Representatives
Attention: Ellen Dargie
2347 Rayburn House Office Building
Washington, DC 20515

Dear Congressman Issa:

Thank you for your letter of April 2, 2013 to Acting EPA Administrator Bob Perciasepe and me concerning the draft Municipal Separate Storm Sewer System (MS4) permit proposed for the San Diego Region by the San Diego Regional Water Quality Control Board (Regional Board).

We have been working closely with the Regional Board in developing the draft San Diego Regional MS4 permit over the past two years, and have carefully reviewed the draft MS4 permit to ensure it implements federal statutory and regulatory requirements and is sensitive to the challenges permittees face in funding and implementing stormwater controls. Stormwater management is a very high priority for us, as urban stormwater runoff is the principal cause of numerous water quality impairments that affect beaches, streams, lakes, and rivers throughout Southern California. (see http://waterboards.ca.gov/water_issues/programs/tmdl/integrated2010.shtml)

The draft MS4 permit represents the fifth iteration of MS4 permits developed by the Regional Board since 1990. Over the past 10 years, the Regional Board also developed six total maximum daily loads (TMDLs) which evaluate discharge sources causing pollution problems and identify needed pollutant load reductions. These TMDLs indicate that substantial reduction of pollutants from municipal stormwater sources is needed to restore the health of beaches and other waters in the San Diego Region. The draft MS4 permit incorporates specific requirements based on these TMDLs to reduce pollutants in stormwater discharges. We believe the draft MS4 permit appropriately reconciles the need for more effective action to restore our polluted waters with the practical realities municipalities face in controlling stormwater pollution.

Your letter expresses concern regarding the potential costs that complying with the draft MS4 permit requirements would entail, particularly those associated with TMDL implementation; similar concerns have been expressed by the permittees. Over the past few months, we have met several times with representatives of San Diego County and other municipal jurisdictions to discuss their concerns.

The TMDL that has generated the most concern among the permittees is the bacteria TMDL adopted by the Regional Board in 2010. Implementation of the TMDL will result in improved controls on stormwater and other sources that cause bacterial water quality impairment at San Diego area beaches and will address widespread concerns about beach closures and illnesses suffered by swimmers. We recognize stormwater controls are costly, but ineffective stormwater control already imposes high costs to the local economy when swimmers in polluted water get sick and beach visitation declines. The Regional Board recognized that TMDL implementation may require a considerable amount of time and provided for a 20-year timeframe, while indicating it would be willing to consider extending the timeframe, if new information supports those changes. TMDL implementation schedules were based on the best information at the time of adoption, but the State acknowledges the difficulty of accurately forecasting the time needed for implementation. For this reason, the draft MS4 permit recognizes that modification of the initial requirements in the permit implementing the TMDL may be necessary. As set forth in Provision B.5 of the permit, the Board is committed to an iterative, adaptive management process through which permit requirements will be periodically revised as new information becomes available. Provision II.H.4.c also provides a specific permit reopener to modify permit requirements related to TMDLs when appropriate.

The draft MS4 permit would also provide a new, innovative mechanism through which permittees can implement permit requirements through watershed-based implementation plans that allow for focusing first on highest priority, cost-effective pollution controls. Through the development and implementation of these Water Quality Improvement Plans, permittees can have substantial flexibility to determine how best to sequence implementation actions. This planning process would also afford permittees the ability to collect information needed to support potential revisions in permit schedules and requirements. While the draft MS4 permit and associated TMDLs provide several "reopener" opportunities, the permit needs to be renewed every five years, which provides another opportunity for the State, permittees, and other stakeholders to consider revisions in permit implementation requirements and timeframes. Thus, we believe the draft MS4 permit is sensitive to the concerns raised by San Diego County and that its implementation can be reasonably and practicably guided by the permittees' progress.

Your letter also noted that Permittees have raised concerns regarding the science and analysis underlying the TMDLs, in particular the bacteria TMDL. The Regional Board developed the bacteria TMDL through a multi-year process which provided numerous opportunities for input by stakeholders. That process included review of the science underlying the TMDL by third-party peer reviewers, and extensive analysis of TMDL implementation costs prior to State adoption of the TMDL. We also carefully reviewed the basis for the TMDL and believe the science and analysis are sound. Nevertheless, given the TMDL reopener provisions and draft MS4 permit's adaptive management process noted above, the State has clearly signaled its willingness to consider modifying the TMDLs and permit if new information supports changes.

Finally, in response to the request in your letter, EPA held a conference call with your staff on April 9, 2013. We discussed details of the draft MS4 permit and TMDLs and, more generally, opportunities to address the funding concerns raised by San Diego County. We noted

that to help address stormwater control costs, low cost loans are available through the California State Revolving Fund program. We also described EPA's new Clean Water Act integrated planning initiative started in 2012. This initiative provides the opportunity for municipalities to work with States and EPA to develop plans designed to reduce overall compliance costs by considering all wastewater and stormwater management obligations in an integrated fashion and sequencing implementation of control projects to address the most significant water quality issues first. While we have discussed this initiative with many municipalities in California, none have yet opted to pursue this opportunity. Lastly, as mentioned in your letter, EPA is currently working with municipalities to clarify how financial capabilities of local governments should be considered in determining Clean Water Act obligations. We welcome the opportunity to discuss these initiatives further with municipal governments.

We trust this information is helpful in addressing your concerns. If we can be of further assistance, please call me or our Congressional Liaison Officer, Brent Maier at (415) 947-4256.

Sincerely,



Jared Blumenfeld