



## CITY OF SIGNAL HILL



---

2175 Cherry Avenue ♦ Signal Hill, California 90755-3799

26 June 2012

Via E-Mail

Jeanine Townsend, Clerk to the Board  
State Water Resources Control Board  
1001 I Street, 24<sup>th</sup> Floor  
Sacramento, CA 95814  
[commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)

**Subject: State of California Department of Transportation Municipal Separate Storm Sewer System Permit, Second Draft**

Dear Ms. Townsend:

I am writing on behalf of the City of Signal Hill, a city in Los Angeles County. We appreciate the opportunity to comment on the Second Draft of the Caltrans Municipal Separate Storm Sewer System (MS4) Permit (Draft Permit). As an MS4 permittee subject to the Los Angeles area MS4 Permit, our city is interested in issues of potential statewide significance in other MS4 permits. In the case of the Caltrans Permit, we are concerned about the Receiving Water Limitations provisions incorporated into the Draft Permit, which are significantly flawed and have the potential to be precedential.

**Need for Consistency with Order WQ 99-05**

The City of Signal Hill is concerned that the Receiving Water Limitations language in the draft permit is counter to established State Water Board policy. Further, it may create a regulatory situation with which it is impossible for Caltrans to comply. The City of Signal Hill and other MS4 permittees have presumed, with respect to similar language in other permits, that the Receiving Water Limitation language, taken in conjunction with State Water Board policy as specified in WQ 99-05, established an iterative management approach. Such an approach – with the built-in flexibility to respond to changing conditions or program needs – is the most appropriate approach from both a technical and a stormwater management perspective. The language in the Caltrans Permit presents no such flexibility.

The State Water Board adopted Order WQ 99-05 to amend Order WQ 98-01 in response to objections from the United States Environmental Protection Agency (EPA) to the receiving water limitation language in Order WQ 98-01. When it did so, the Board clearly stated that, "permittees shall comply with Discharge Prohibitions [ ]<sup>3</sup> and

Receiving Water Limitations [ ] through timely implementation of control measures and other actions to reduce pollutants in accordance with the SWMP and other requirements of this permit including any modifications.” The associated footnote directed that permit writers were to insert the appropriate numbers for prohibitions and limitations that implement water quality objectives and water quality standards. The Order then specified a procedure for doing so. This procedure became known as the iterative process.

However, implementation of Order WQ 99-05 through the years has not clearly indicated that the iterative process applies to both discharge prohibitions and receiving water limitations. Permits have been structured to express discharge prohibitions separately from receiving water limitations. On July 13, 2011, the United States Court of Appeals for the Ninth Circuit issued an opinion in *Natural Resources Defense Council, Inc., et al., v. County of Los Angeles, Los Angeles County Flood Control District, et al.* (NRDC v. County of LA), which addressed two key issues for California’s MS4s. One of those issues was related to implementation of WQ Order 99-05. Due to the separation of discharge prohibitions from receiving water limitations, the Court of Appeals found that the Los Angeles County MS4 Permit “offers no textual support for the proposition that compliance with certain provisions shall forgive non-compliance with the discharge prohibitions.”

The Caltrans Draft Permit provides the State Water Board the opportunity to provide the textual support that the Court of Appeals found lacking in the Los Angeles MS4 Permit. Clear language implementing the direction in WQ Order 99-05 that the iterative process applies to both discharge prohibitions and receiving water limitations is essential to maintain the focus of permittees on improving water quality in California through an iterative adaptive management process that responds to the episodic and variable nature of rainfall and increased understanding of the nature and sources of water pollutants.

The April 27, 2012 draft of the Caltrans Permit attempts to implement WQ Order 99-05 in Part E.2.c.6).c. However, that section is titled, “Receiving Water Limitation Compliance” and does not adequately make clear that the iterative process applies to both discharge prohibitions and receiving water limitations. The Draft Permit should be revised to include iterative process language consistent with that of WQ 99-05 in Parts A, B, C, and D of the Permit to provide the “textual support” that the Court of Appeals found missing in the Los Angeles County MS4 Permit.

The City of Signal Hill is aware that several months ago the California Stormwater Quality Association (CASQA) submitted alternative language to revise the receiving water limitation language in stormwater permits in California to address the deficiency noted by the Court of Appeals. We are not certain that the language submitted by CASQA is the language that you should use, but we are certain that you need to provide the missing textual support to make clear that the iterative process applies to all discharge prohibitions and receiving water limitations in stormwater permits.

The City of Signal Hill urges the Water Board to revise the discharge prohibition and receiving water limitation language in the Draft Permit. Whatever alternative language is used should allow MS4 permittees to focus and prioritize their resources on critical water quality issues that will lead to water quality improvement and remove the unnecessary threat of immediate and significant liability due to untenable regulation.

Thank you again for the opportunity to provide these comments.

Sincerely,



Kenneth Farfsing  
City Manager

cc: City Council  
Deputy City Manager  
Public Works Director