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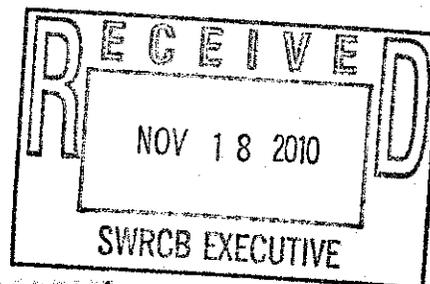
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November 17, 2010

Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814



Subject: Comment Letter - Effectiveness Assessment Document

The city of Orange appreciates the opportunity to comment on the State Water Resources Control Board's proposed guidance document to assess MS4 Storm Water Program Effectiveness. The document states that its intended purpose is for its use by local regional boards in assessing effectiveness of municipal storm water programs under their jurisdictions. The document also states that it can be used by municipalities to assess their own local programs.

The City welcomes such guidance but is concerned that it may be inappropriately used by regional boards when conducting audits. Most permits contain prescriptive requirements for program elements identified in the Effectiveness Assessment Document such as public education, the industrial and commercial programs, construction and others. These program elements typically contain specific requirements such as the number of impressions to be conducted by the public education program; the number of facilities to be inventoried and inspected annually under the industrial and commercial program element and the frequencies of sites to be inspected under the construction element. A number of these requirements are included in the proposed checklist in Attachment D.

While the MS4 permits also contain requirements for assessing the effectiveness of local programs, how a municipality assesses its program varies widely as noted in the guidance document. As such, complying beyond the specific requirements in a permit could be problematic. This document is not part of a permit and how a regional board assesses a municipal program is likely to be subjective and may lead to inaccurate assessments of a local storm water program.

Ideally, a municipal program should know what is being assessed during an audit. The presumption has been that an audit would be based on complying with permit requirements. Finding a program out of compliance because of findings from an effectiveness assessment raises some very troubling questions. Such as what is the perceived level of effectiveness that a municipality should be at?

To avoid these problems it is suggested that once this finalized, specific training should be provided to the regional boards and municipalities over a number of years on what should be included and what is the expected level of effectiveness that storm water programs should be at. This could be level 1, 2 or 3 or could vary by program element. This would ensure that municipalities and the regional boards have a common understanding on how a program is being assessed.

In addition, Findings from program assessments should be the basis for new requirements in storm water programs if required. Too often reissued permits contain new requirements borrowed from the most recently issued state permits without considering whether it is practical or makes economic sense to include such requirements in new permits. Municipalities already have difficulty answering the question of whether all the money spent on local storm water programs is having an actual improvement in water quality or they are simply complying with a regulatory requirement.

As noted in the proposed document, compliance with most requirements in an MS4 permit are likely to lead to levels 1 and 2 and possibly level 3 in more mature program elements. It may be possible that Level 4 (load reduction) achievement may be calculated using the methods suggested in the document. However, achievement of level 5 (Discharge Monitoring) and 6 (Receiving Water Monitoring) will take years and can only be accomplished through monitoring.

Showing achievement of levels 5 and 6 is extremely difficult and costly. As noted in the proposed document, these levels can only be achieved through well developed programs and the monitoring of discharge outfalls and receiving waters. MS4 Permits already contain specific monitoring requirements for receiving water monitoring that include mass emissions, toxicity, bioassessment and other permit monitoring requirements. In northern Orange County, the amount of money budgeted annually by Permittees for this monitoring is approximately \$1.2 million.

To be able to determine pollutant load reduction in discharge outfalls and to show receiving water quality improvement would require monitoring at additional locations beyond what is currently implemented. This additional monitoring is problematic and costly and not a viable option during difficult economic times. To alleviate this condition and to show future improvement in these levels, it is suggested that more flexibility be provided to MS4 permittees in setting monitoring permit requirements.

With regards to the questions in the checklist in Attachment D, the responses for level 2 questions are different depending on the specific program element. For the public education program that is targeted at residents, the response may be whether they know the difference between a storm drain and a storm sewer and whether storm water is treated or not. For industrial and commercial facilities it may be whether operators know that pollutants are being discharged from their facilities and similarly responses for construction sites. The CASQA guide

provides some of these differences. It is suggested that the program elements that these questions are directed at be identified.

With regard to the questions related to data collection and trends in levels 5 and 6, it may not be possible to provide an affirmative answer or even answer the question due to the complexity involved in determining changes in receiving water quality as noted previously. Regional boards should not take these responses to mean more monitoring is required. Instead, regional boards should look to provide more flexibility in the required monitoring so that these questions may be assessed more accurately in future years.

We hope these comments are helpful in developing the final Effectiveness Assessment Document. Questions or comments requiring clarification should be directed to Gene Estrada at 714-744-5547.

Sincerely,



Frank Sun
Deputy Public Works Director/City Engineer

cc: Joe DeFrancesco, Public Works Director
Gene Estrada, Environmental Program Manager