

Regional Board Meeting  
June 21, 2006

Item 3

Supporting Document # 10

**Written Comments from All Other Interested  
Parties**

**June 21, 2006 Regional Board Meeting  
Item 3, Supporting Document # 10**

**Written Comments from All Other Interested Parties**

- A. Building Industry of San Diego County
- B. Coast Law Group
- C. Collins, Bob
- D. Industrial Environmental Association
- E. National Association of Home Builders
- F. Natural Resources Defense Council
- G. Pardee Homes
- H. Project Design Consultants

**June 21, 2006 Regional Board Meeting  
Item 3, Supporting Document # 10**

**A. Building Industry of San Diego County**

A

9201 Spectrum Center Blvd., Suite 110  
San Diego, CA 92123-1407

P 858.450.1221  
F 858.552.1445

www.biasandiego.org

**PRESIDENT**

Horace Hogan II  
Brehm Communities

**VICE PRESIDENT**

Scott Brusseau  
Newport National Corp.

**TREASURER / SECRETARY**

Paul Barnes  
Shea Homes

**IMMEDIATE PAST PRESIDENT**

Scot Sandstrom  
Richmond American Homes of California

**CHIEF EXECUTIVE OFFICER**

Paul A. Tryon

**AFFILIATES**

California Building  
Industry Association

National Association  
of Home Builders

National Association  
of Industrial and  
Office Properties

June 7, 2006

Mr. John Minan, Chair  
San Diego Regional Water Quality Control Board  
9174 Sky Park Court  
San Diego, CA 92123

Re: California Regional Water Quality Control Board San  
Diego Region Tentative Order NO. R9-2006-0011 NPDES NO.  
CAS0108758 Waste Discharge Requirements for Discharges of  
Urban Runoff From the Municipal Separate Storm Sewer  
Systems (MS4s) Draining the Watersheds of the County of San  
Diego, the Incorporated Cities of San Diego County, the San  
Diego Unified Port District, and the San Diego County  
Regional Airport Authority

Dear Chairman Minan,

The San Diego Building Industry Association of San Diego  
County on behalf of its over 1465 member companies  
representing a work force of over 100,000, including  
homebuilders, architects, contractors and other companies  
associated with the development of commercial, industrial and  
residential development offers comments on the following  
sections of Draft Order

**HYDROMODIFICATION**

Pursuant to Section D.1.g, the Copermittees will be required to  
prepare a Hydromodification Management Plan ("HMP") and



incorporate it into their Standard Urban Stormwater Mitigation Plans SUSMPs. The Copermittees will be required to prepare their HMP using a similar study process as that used in the Santa Clara County HMP but incorporating physical data from the San Diego County watersheds.

The required study process provides for calibration to local conditions and inclusion of relevant physical processes. After determining the range of rainfall events that must be controlled at Priority Development Projects, the Copermittees will need to develop management practices appropriate to achieve the post-project flow control. The permit does not preclude the use of approaches other than that used in the Santa Clara County HMP for setting requirements for meeting the flow control criteria. This requirement raises three concerns; adequate time for HMP development, confirmation that the IMPs will perform as required, and adequate engineering.

The primary comment regarding this requirement is the time frame established in Section J.4 for preparation of the HMP, which is approximately two years from adoption of the permit to the due date for submittal of the HMP to the Regional Water Quality Control Board, San Diego Region ("SDRWQCB"). The Santa Clara County HMP was developed in approximately four years, and the Contra Costa County (geographically adjacent to Santa Clara County) HMP was developed in approximately two and a half years.<sup>1</sup>

---

It is important to note that Contra Costa's accelerated schedule was possible because Contra Costa was able to rely on much of the data previously collected in

We respectfully request an extended timeline of 36 months for HMP preparation due to (1) the larger amount of physical data to be gathered and calibrated, (2) the need to develop management practices and sizing criteria specific to San Diego County, and (3) the need to assemble a panel of appropriately licensed experts to review the HMP.

San Diego County is approximately four times larger in geographic area than either Santa Clara or Contra Costa Counties. Within its large geographic area, San Diego County encompasses many watersheds with varying geologic and topographic conditions as well as varying precipitation data. Not only does San Diego County cover a considerably larger geographic area than Santa Clara or Contra Costa Counties, but the climate is also different. Since geologic, topographic, hydrologic and climatic factors influence the natural systems that the HMP management strategies are intended to mimic and protect, unique factors in San Diego will result in unique design issues for HMP implementation in San Diego.

The Copermittees will require a considerable amount of time for gathering field data and historic data and calibrating the model for San Diego County's many varied watersheds. The short time frame for preparation of the HMP will not leave sufficient time to devise management strategies tailored specifically for San

---

the neighboring county. San Diego County is geographically, hydrologically, and climatically very different from either Santa Clara or Contra Costa Counties. Thus, the San Diego Copermittees will not have the benefit of this previously collected data to accelerate the HMP development process.

Diego County after the calibration process is completed. The time frame for Santa Clara County was twenty-three months from the submittal of base data to completion of the final report. The time frame proposed for San Diego County is just twenty-three months total, including data gathering and model calibration. Twenty-three months is insufficient to develop a safe, reliable, and effective HMP.

During the previous permit cycle, the Copermittees had an organizational structure in place to develop the model SUSMP. The City of San Diego was able to commit an in-house expert to prepare the Model SUSMP. These factors allowed the Copermittees to make use of the full schedule for preparation of the Model SUSMP. Preparation of the HMP will require the Copermittees to develop an organizational structure and to hire a consultant. It takes time for an agency to hire a qualified consultant. This will further constrict the schedule of HMP preparation. Finally, Mayor's Clean Water Task Force from which the Copermittees can readily draw valuable peer review and feedback from licensed professionals to expedite the development of the HMP no longer exists.

A secondary benefit of the extended time frame would be that the experience of other counties in California could be incorporated into the San Diego County HMP, where determined to be applicable to San Diego County. Although the type and sizing of management practices may differ from other counties, the ultimate goal is the same. Because the other Counties have only recently adopted their HMPs, there is no real world data to confirm that the types and sizing of the management practices adopted elsewhere will actually work. A prudent twelve-

month extension could avoid costly mistakes and irreparable harm to the environment by allowing the Copermittees to observe and learn from other jurisdictions.

We recognize that ongoing development in San Diego County has the potential to impact streams through hydromodification. We agree that it is important that the HMP be developed and implemented as soon as prudently possible to provide protection for the streams. However, the draft permit addresses these concerns by including language in Section D.1.g.(6), Interim Standards for Projects Disturbing 50 Acres or More. We suggest, however, that this time period be extended to eighteen months after approval of the Draft Order in order to allow sufficient time to adequately prepare for the implementation of this requirement. We believe that this is the minimum time required by the Copermittees to jointly develop a consistent set of minimum Interim Standards for the HMP and to implement the regulatory framework necessary to make the standards enforceable. We suggest that this should be done through the same regulatory framework used to develop the model SUSMP and discuss in further detail below.

Our second concern is the lack of a statement in the Draft Order acknowledging that a registered civil engineer must prepare hydrologic calculations and other technical backup for the HMP, for both legal and safety reasons. Civil Engineering includes the studies or activities in connection with fixed works for drainage, flood control, municipal improvements, and purification of water.<sup>2</sup>

---

<sup>2</sup> Business and Professions Code § 6731.



Included within this definition is the preparation of designs, plans, and specifications.<sup>3</sup> Moreover, California Business and Professions Code section 6730.2 requires that at least one registered engineer shall be designated the person in responsible charge of professional engineering work for each branch of professional engineering practiced in any department or agency of the state.<sup>4</sup>

There can be no doubt that the specifications in section D.1.g. and the supporting definitions and descriptions in Section C of the permit and the Technical Report constitute the preparation of designs, plans and specifications as those terms are defined by the statute. Continuous simulation of the entire rainfall record to identify a range of rainfall events for which Priority Development Projects post-development runoff rates and duration shall not exceed pre-development runoff rates and durations meets the definition of civil engineering. Additionally, the specification of the range of storm events for design and the development of management measures constitutes the preparation of specifications in connection with fixed works of drainage. Management measures that are practicable to implement must consider several anticipated engineering issues that will directly affect the health and safety of the community, such as slope stability, vector control, street design standards, and maintenance procedures. Thus, a licensed professional civil engineer must prepare this work.

---

<sup>3</sup> Business and Professions Code § 6731(c).

<sup>4</sup> Business and Professions Code § 6730.2

Neither the Draft Order, nor the supporting Technical Report identifies which RWQCB staff member is designated the responsible person in charge of the civil engineering supporting section D.1.g. Therefore, it is essential that the Draft Order clearly delegate this responsibility to the Copermittees.

In order to safeguard life, health, property and public welfare, any person, either in a public or private capacity who practices, or offers to practice, civil engineering in this state, including any person employed by the State of California, shall submit evidence that he is qualified to practice, and shall be registered accordingly as a civil engineer.<sup>5</sup> The state legislature had good reason to insure that those who engage in civil engineering are appropriately qualified to engage in the practice. Whenever stream volumes and velocities are modified, there is a potential to affect health, property and public welfare. Improperly detained water could result in public health problems including such diseases as West Nile Virus. If the erosion potential of a stream segment is not properly calculated, it could result in down-gradient flooding. Without the signature of a professional civil engineer responsible for the work, the Draft Order fails to provide the necessary assurances that health, property, and public welfare are protected. Apparently, this task has been left to the Copermittees. In order to fulfill their legal obligation the Draft Order must provide the Copermittees sufficient time to engage and utilize the services of appropriately qualified registered engineers. Moreover, a professional engineer must sign any final

---

<sup>5</sup> Business and Professions Code § 6730.

Hydromodification Management Plan produced by the Copermittees to indicate his or her responsibility for the plan.<sup>6</sup>

**LIMITATION ON GRADING AREA**

The Draft Order requires the Copermittees to limit grading to a maximum disturbed area as determined by each Copermittee. (See, D.2.c(1)(j), page 27). The Technical Report references the Cal-Trans permit, which specifies that no more than seventeen acres be exposed unless otherwise approved by the Cal-Trans engineer in writing. (Technical Report, page 63).

Section D.2.c.(1)(j) goes on to provide that the Copermittee has the option of temporarily increasing the size of disturbed soil areas by a set amount beyond the maximum, if the individual site is in compliance with applicable storm water regulations and the site has adequate control practices implemented to prevent storm water pollution.

The maximum disturbed area that the Copermittees allow needs to provide flexibility for larger grading projects to avoid unintended negative consequences to infrastructure and water quality. On larger projects, limiting the disturbance area to an arbitrarily low acreage will force other infrastructure elements (waterlines, sewer lines, drainage lines, dry utilities, roads, etc.) to compromise their design and construction standards. This in turn may lead to unforeseen consequences, which could have even greater impacts on water quality such as

---

<sup>6</sup> Business and Professions Code § 6735.

improperly functioning drainage systems, and additional sanitary sewage pump stations, which are prone to overflows.

Grading is but one element of many interrelated elements on a large land development project. Limiting the amount of grading area will force compromises in the proper design of the other elements of a land development project, potentially compromising the health and safety of the citizens in the community.

In addition, limiting the size of a grading operation to an arbitrary acreage will increase the time a site is exposed to rain events, thereby increasing the number of storm events to which the disturbed areas are exposed. Extending the time it takes to complete the grading phase of a project increases the probability that an exposed area will be subject to a rain event, thereby increasing the risk to water quality.

As an alternative to limiting (phasing) the amount of exposed area during grading operations, it is more effective to require implementation of a phased finished-grading/erosion control plan. This is the basis for the Caltrans Standard Specification section referenced. It limits grading operations to seventeen acres "before either temporary or permanent erosion control measures are accomplished". If we agree that Best Management Practices such as slope blankets, hydro seed, and bonded fiber matrix are effective erosion control measures, then the immediate implementation of erosion controls is the key ingredient in a grading operation, and not the limitation of grading area.

Therefore, an immediate, concurrent erosion control implementation plan is more effective than limiting grading area.

Instead of placing arbitrary area limitations on grading operations, the permit should require the Copermittees to work together to develop a menu of Best Management Practices including, but not limited to, more detailed erosion control planning and phasing, more detailed Weather Triggered Action Plans, grading controls to keep stormwater on site, additional inspections by independent third party auditors, or more frequent inspection by field engineers. Our proposal to implement this cooperative effort is described in detail below.

#### **ADVANCED TREATMENT**

Section D.2.c.(1)(f), page 27 of Draft Order requires Slope stabilization on all active slopes during rain events regardless of the season, unless Advanced Treatment is being implemented downstream of the slope. In addition Section D.2.c.(1)(k), page 27 of the Draft Order requires Advanced Treatment for sediment at construction sites that are determined by the Copermittee to be a significant threat to water quality. In evaluating the threat to water quality, the following factors shall be considered; (1) soil erosion potential; (2) the site's slopes; (3) project size and type; (4) sensitivity of receiving water bodies; (5) proximity to receiving water bodies; (6) non-storm water discharges; and (7) any other relevant factors.

Attachment C to the Draft Order defines Advanced Treatment as "using mechanical or chemical means to flocculate and remove suspended sediment from

runoff from construction sites prior to discharge. The definition of Advanced Treatment is expanded in the Technical Report at page 63, which states, "Advanced Treatment consists of a three part treatment of coagulation, sedimentation, and polishing filtration."

Whenever a new BMP is mandated, the Regional Board must consider four factors. Is it environmentally safe? Is it technically feasible? Will it achieve the desired water quality outcomes? Can a specific BMP be imposed?

Other Regional Boards have considered the use of flocculation BMPs. In 2004, the Central Valley Regional Board concluded that the use of flocculants "pose a potential risk to water quality."<sup>7</sup> Specifically, the Central Valley Regional Board was concerned about the potential for acute and chronic impacts that polymers and other additives may have on aquatic life in surface waters. "Polymers released from chemical treatment systems have created significant environmental harm and resulted in enforcement actions by the California Department of Fish and Game and the Central Valley Regional Water Quality Control Board."<sup>8</sup> Conversely, neither the Draft Order nor the Technical Report provide any support for the proposition that the use of polymers and other additives have been demonstrated to be environmentally safe.

---

<sup>7</sup> Monitoring Requirements for Storm Water Treatment Systems that Utilize Chemical Additives to Enhance Sedimentation, William J. Marshall, Chief Storm Water Section, California Regional Water Quality Control Board, Central Valley Region, September 3, 2004.

<sup>8</sup> Id.

From the perspective of feasibility, field experience has shown that the largest Advanced Treatment systems currently available are capable of handling no more than fifty gallons per minute.<sup>9</sup> These units typically rent for as much as \$35,000 per month<sup>10</sup>. Assuming that projects sites are required to process and discharge the runoff through their Advanced Treatment systems within seventy two hours as required by most local ordinances for a one inch storm event, approximately one Advanced Treatment unit would be required for every eight acres of disturbed area. Neither the Draft Order, nor the supporting Technical Report considers whether there are sufficient Advanced Treatment units available to meet the Draft Order's requirements at any price.

While there appears to be significant safety and feasibility problems with Advanced Treatment, neither the Draft Order nor the supporting Technical Report provides any factual support for the proposition that Advanced Treatment actually works.<sup>11</sup> Based on the Technical Report, the only flocculent that appears to have been tested for safety or efficacy is Storm-Klear™ and Gel-Floc™. Storm-Klear™ is a patented product.<sup>12</sup> Thus, the Draft Order creates a mandated

---

<sup>9</sup> This volume is based on actual output after accounting for down time to perform maintenance on the system including filter cleaning.

This information was collected from clients using Baker Tank units in conjunction with Storm-Klear™ and Gel-Floc™ systems. While other types of Advanced Treatment systems may be available, we are not aware that they have been used successfully to treat for silt and sediment.

Staff relies on anecdotal observations and a "SWRCB, 2004 conference on Advanced Treatment at Construction Sites" without any further support.

<sup>12</sup> See United States Patent No.: US 6,821,427

monopoly in favor of a single supplier. California Water Code section 13360 provides that “no waste discharge requirement or other order of a regional board . . . shall specify the design, location, type of construction, or particular manner in which compliance may be had with that requirement, order, or decree, and the person so ordered shall be permitted to comply with the order in any lawful manner. By mandating a specific patented technology, the Draft Order violates the mandates of Water Code section 13360.<sup>13</sup>

As stated above the Draft Order directs the use of Advanced Treatment in two circumstances. The first requires its use downstream of all active slopes that have not been stabilized prior to a rain event. The statement is very broad. It does not define a slope nor what is meant by downstream. For example, a slope could potentially be located inside a sediment basin. Based on the Draft Order the slope of the basin would require advance treatment downstream.

---

<sup>13</sup> We note the RWQCB argues in its Preliminary Response to Questions from the Building Industry Association of San Diego County (May 22, 2006) that Advanced Treatment is not a specific BMP but rather a specific class of BMPs. This appears to be a distinction without a legal or factual difference. First, California Water Code section 13360 makes clear that “no waste discharge requirement or other order of a regional board . . . shall specify the design, location, type of construction, or particular manner in which compliance may be had with that requirement, order, or decree.” The statute makes no distinction between a single option and a class of options. Rather, it prohibits Regional Boards from limiting the means by which a permittee achieves compliance with a permit requirement. Second, while staff hypothecates on other alternative Advanced Treatment BMPs, the fact is that the only BMP with which they appear to have any documented experience is a patented process. Thus, this requirement creates a regulatory monopoly.



Other options should be considered before Advance Treatment is mandated. Even in the worst case, a slope that is not stabilized prior to a rain event may not result in a discharge of sediment offsite. A continual process of review and analysis of the site and implementation of site specific BMPs would be a better solution than mandating the use of Advance Treatment for all active slopes during rain events.

In the vernacular, as written, this Advanced Treatment Mandate is analogous to attempting to kill a fly with a howitzer. We do not disagree that there may be a limited number of projects for which Advanced Treatment may be efficacious. However, we do not believe that a one size fits all directive is the appropriate way to achieve improved water quality.

A definitive link between unstabilized slopes and the use of Advanced Treatment downstream as the only acceptable BMP has not been established. The Draft Order may make recommendations for Advanced Treatment. However, a Regional Board may not mandate the specific method or materials for compliance when there are several options that will achieve the desired results. Additionally, the implementation of this excessive directive would be virtually impossible in many cases such as perimeter slopes where there is no place to locate an Advanced Treatment plant.

The existing Draft Order requires stabilization of all slopes but does not give any specific mandates as to a timeline for implementation, active verses inactive slopes, or recommendations of BMPs to be utilized. It is a leap to go from this requirement to Advanced Treatment and negate all variations in between. In

addition to concerns with the safety, efficacy, and legality of Advanced Treatment, this directive also raises issues concerning obtaining a separate Waste Discharge Permit<sup>14</sup> for each Advanced Treatment plant location to address the resulting discharge from these chemical treatment systems. It is recommended that as an alternative the Draft Order direct the Copermittees to develop a set of Standard Construction Stormwater Mitigation Practices (“SCSMP”) through a process similar to the one used to develop the SUSMP which could include Advanced Treatment as one of many options to be employed were it is determined to be feasible, safe and effective.

The second requirement mandates the need for advanced treatment on all areas of construction sites that are determined to have a significant threat to water quality. Although the draft permit provides the Copermittees with guidelines to assess the threat to water quality, the guidelines are so broad as to be vague and ambiguous. Most, if not all, construction sites in San Diego County are located within a watersheds tributary to a 303(d) impaired water body for silt and sediment.<sup>15</sup>

---

California Water Code § 13260 requires that any person proposing to discharge waste that could effect the quality of the waters of the state shall file a report of waste discharge with the appropriate regional board and obtain a permit (waste discharge requirements) prior to discharge. Neither the Draft Order nor the Technical Report consider whether detained storm water that has been chemically treated is considered storm water or has been converted to non-storm water. If the former it would appear that Prohibition A.1. of the Draft Order prohibits its discharge without a permit. If the later, it would appear that Prohibition B.1. of the Draft Order prohibits its discharge without a permit.

The following water segments have been determined to be impaired for sedimentation and siltation: Aqua Hedionda Lagoon, Buena Vista Lagoon, Los Penasquitos Lagoon, and San Elijo Lagoon. California Regional Water Quality Control Board San Diego Region Preliminary Responses to Questions on

Because of its vague and ambiguous language, it is likely that the Draft Order would be read to mandate Advanced Treatment at most construction sites. Additionally, many BMPs can be implemented on a construction site to reduce significantly the threat to water quality that may be safer and more effective than Advanced Treatment.

Advanced Treatment at a construction site is not a practicable solution to reduce the threat of sediment impairing a receiving water from a construction site due to the variable nature of construction activity generating numerous and variable runoff locations, the need for qualified personnel to operated the treatment devices, the availability of numerous Advanced Treatment devices at a given construction site, and the ability of the device to treat the necessary quantity of storm water runoff. An effective combination of sediment and erosion control, as well as site design, and source control BMPs, will reduce the potential threat to water quality of storm water runoff from a construction site.

Construction sites are in a state of constant flux where runoff locations vary based on the sequencing of construction activity. Trained personnel must operate the Advanced Treatment devices. If qualified personnel are not available to operate

---

Tentative Order No. R9-2006-0011 from the Building Industry Association of San Diego County, dated May 22, 2006 states that "Tributary to" in the Tentative Order means one that contributes discharges. In the context of construction sites, if the discharge of stormwater contributes to an impaired waterbody, then that site is "tributary to" the impaired waterbody. Thus, any construction site whose stormwater eventually finds its way to any of the lagoons listed above, it is tributary to that lagoon and, therefore, a high priority site requiring Advanced Treatment.

the machinery, a threat exists that the devices could malfunction and discharge additional pollutants to the receiving water, which could result in an even greater threat to water quality. The lack of qualified personnel to operate the devices could result in breaches from treatment basins that are not pumped down in a timely manner. In certain situations, it may be infeasible to provide Advanced Treatment at a runoff location at a construction site due to access. Availability of devices at the numerous runoff locations and potential discharges of pollutants from the Advanced Treatment devices themselves (i.e. flocculants) is another reason the use of these devices should be limited.

The Draft Order requires that “each Copermittee shall designate a minimum set of effective BMPs and other effective measures to be implemented at construction sites,” including Advanced Treatment. See Section D.2.c.(1) page 27. This mandate creates significant challenges and opportunities for the Copermittees. Technically, the designation of a minimum set of effective BMPs requires professional expertise in areas that may not be available to each individual Copermittee including, but not limited to, engineers, chemists, geologists, and biologists. Legally, in order to make the use of a minimum set of effective BMPs enforceable against construction sites within their jurisdictions, Copermittees will need to give the general public adequate notice and opportunity to comment.<sup>16</sup>

---

In *Environmental Defense Center, Inc. v. U.S. EPA* (9<sup>th</sup> Cir. 2003), the court held that NOI's are the functional equivalent of permit applications and, thus, are subject to the CWA's public availability and hearing requirements. In *Waterkeeper Alliance, Inc. v. U.S. EPA* (2<sup>nd</sup> Cir. 2005) the court held that a permitting scheme that allows permits to be issued without review of Nutrient Management Plans violates the CWA's public participation requirements. The

Finally, in order to coordinate their efforts on a watershed and regional basis, as required by the Draft Order, it is important that the minimum set of effective BMPs be consistent across all jurisdictions.

Order No. 2001-01 presented the Copermittees with a similar challenge in the development of a Model SUSMP. Under that Order, the Copermittees were required to develop collectively a model SUSMP within 365 days of the adoption of the Order. The Copermittees were then granted a further 180 days after approval of the model SUSMP by the SDRWQCB, through a public hearing process, to adopt local SUSMPs and amend their ordinances consistent with the approved model SUSMP.

This process proved to be both effective and efficient. The Copermittees developed a model SUSMP together, pooling their technical expertise and resources. The final product met with the approval of the SDRWQCB and, with few exceptions, has been implemented as written by the Copermittees. We believe that a similar process could be applied to the development and implementation of a minimum set of effective BMPs, including Advanced Treatment BMPs for use at construction sites. We suggest that the following

---

Draft Order's requirement that each Copermittee shall designate a minimum set of effective BMPs and other effective measures to be implement at construction sites is the functional equivalent of a permit application because it provides the specific requirements and prohibitions which will be applied by the Copermittees to construction site. Thus, the CWA requires that the public be permitted to review and comment of each proposed set of minimum effective BMPs and other effective measures prior to their approval by the regional board and adoption by the Copermittees.

language be inserted into the permit concerning the development of a set of construction BMPs, including Advanced Treatment in lieu of the current mandates in section D.2.c. of the Draft Order.

Within 365 days of adoption of this Order, the Copermittees shall collectively develop a minimum set of BMPs and other effective measures to be implemented at construction sites ("Standard Construction Site Mitigation Practices" or "SCSMPs") utilizing authoritative sources including, but not limited to, those requirements set forth in section D.2.c.(1) of this order. Within 180 days of approval of the SCSMPs in a public process by the SDRWQCB, each Copermittee shall adopt its own local SCSMPs, and amend its ordinances consistent with the approved SCSMPs, and shall submit both its SCSMPs and ordinances to the SDRWQCB.

This revision would improve the permit both technically and legally. It would provide for a standard set of construction site practices across the County, thereby providing the consistency necessary for the development of effective WURMPs and RURMPs. The revision would correct many of the legal difficulties arising out of the current language. It would allow the Copermittees to use their limited resources and collective expertise gained during the last permit cycle to develop a state of the art set of construction site practices that are protective of the environment, feasible, and legally defensible.

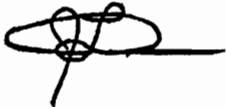
In addition to our above comments, I am attaching for the record a review of the white paper *Alternative Approaches to Stormwater Quality Control* prepared on

our behalf by the National Association of Homebuilders. Their review highlights that the study relies on old and outdated if not outright questionable information. It further makes clear that this review in no way supports any contention by the Board or its staff that they have considered the impacts of this Draft Order on the development of housing within our region.

We appreciate the Board's repeated requests for input from our industry on the impacts the Draft Order will have on the operations of our business and respectfully request that the Board consider carefully the negative environmental consequences likely to occur within the San Diego region if the adoption of this Draft Order forces the Co-permittees and our industry by extension to implement this permit without the appropriate time frame necessary to develop quality implementation ordinances and attendant guidance.

Thank you for considering our comments as you proceed with your deliberations on the adoption of this Draft Order.

Regards,



Jerry Livingston  
Staff Counsel  
Building Industry Association  
of San Diego County

**June 21, 2006 Regional Board Meeting  
Item 3, Supporting Document # 10**

**B. Coast Law Group**



B



COAST LAW GROUP LLP

169 Saxony Road, Suite 204 Encinitas, CA 92024  
Ph: 760.942.8505 Fx: 760.942.8515  
www.constlawgroup.com

# FAX COVER SHEET

FAX NUMBER TRANSMITTED TO: (858) 571-6972

To: Mr. Phil Hammer  
Of: CA Regional Water Quality Control Board, San Diego Region  
From: Marco Gonzalez  
RE: Tentative Order No. R9-2006-0011  
Date: May 11, 2006

DOCUMENTS	NUMBER OF PAGES
Letter	1

COMMENTS:

*The information contained in this facsimile message is information protected by attorney-client and/or the attorney/work product privilege. It is intended only for the use of the individual named above and the privileges are not waived by virtue of this having been sent by facsimile. If the person actually receiving this facsimile or any other reader of the facsimile is not the named recipient or the employee or agent responsible to deliver it to the named recipient, any use, dissemination, distribution, or copying of the communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone and return the original message to us at the above address via U.S. Postal Service.*

\* NOT COUNTING COVER SHEET. IF YOU DO NOT RECEIVE ALL PAGES, PLEASE TELEPHONE US IMMEDIATELY AT (760) 942-8505.

B



169 Saxony Road  
Suite 204  
Encinitas, CA 92024

tel 760-942-8606  
fax 760-942-8515  
www.coastlawgroup.com

**VIA FACSIMILE (858) 571-6972**

May 11, 2006

Mr. Phil Hammer  
California Regional Water Quality Control Board  
San Diego Region  
9174 Sky Park Court, Suite 100  
San Diego, CA 92123

**Re: Tentative Order No. R9-2006-0011  
*Request for Comment Period Extension***

Dear Mr. Hammer:

San Diego Coastkeeper is a non-profit environmental organization committed to the protection of water resources throughout the region. Similarly, the Natural Resources Defense Council is a national, non-profit organization representing more than one million members in protecting public health and the environment. Coast Law Group LLP provides legal services for the San Diego Bay Council.

On behalf of these organizations, we write to request that you extend the period for submission of written comments to Tentative Order No. R9-2006-0011 NPDES No. CAS0108758 Waste Discharge Requirements for Discharges of Urban Runoff From the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds of the County of San Diego, the Incorporated Cities of San Diego County, the San Diego Unified Port District, and the San Diego County Regional Airport Authority (Order).

The Order encompasses activities that have complex technical, social, and financial implications. We therefore request that the period for public comment on the Order be extended until July 31, and that the Order approval hearing by the Regional Board be held in September or October. This will permit us, and other interested parties, adequate time to submit informed comments on the Order and to absorb the Regional Board staff's response to the comments, while likewise allowing the staff sufficient time to consider the external comments prior to the approval hearing.

Thank you for your help with this matter.

Sincerely,

/s./

Gabriel Solmer  
Staff Attorney  
San Diego Coastkeeper  
2924 Emerson St., Suite 220  
San Diego, CA 92106

/s./

Marco Gonzalez  
Partner  
Coast Law Group LLP  
169 Saxony Rd., Suite 204  
Encinitas, CA 92024

/s./

David Beckman  
Senior Attorney  
NRDC  
314 Second St.  
Santa Monica, CA 90401

**June 21, 2006 Regional Board Meeting  
Item 3, Supporting Document # 10**

**C. Collins, Bob**

C

**From:** "Joellen Collins" <collijo@cox.net>  
**To:** <phammer@waterboards.ca.gov>  
**Date:** 5/16/2006 1:13:45 PM  
**Subject:** Comments on the Proposed Storm Water Permit

Hello Phil-

Attached are some comments I have for your consideration for the new Storm Water Permit – Tentative Order R9- 2006-0011.

I'll be away on vacation for the next two (2) weeks. I understand you'll be having a meeting with copermittees May 24, 2006.

You may wish to discuss my suggestions at the meeting. If you have any questions please call me after May 30th.

I hope to go to the June Board meeting where the permit will be discussed.

Bob (619-447-6329)

INCLUDEPICTURE \d "C:\\Program Files\\Common Files\\Microsoft Shared\\Stationery\\sunbannA.gif" \\* MERGEFORMATINET

--

Internal Virus Database is out-of-date.

Checked by AVG Anti-Virus.

Version: 7.0.338 / Virus Database: 267.10.14/79 - Release Date: 08/22/2005

**Phil Hammer**

**Page 1 Of 4**

**San Diego Regional Water Quality Control Board**

**Re: Storm Water Permit – Tentative Order R9-2006-0011**

**I have reviewed the storm water permit and in particular have reviewed the provisions of the Watershed Urban Runoff Management Plan under the permit. The permit looks good.**

**I offer for your consideration the following suggestions on actions the municipal agencies and your agency should consider during the next five year permit cycle with regard to the WURUMPs .**

**Land use decision making has the biggest impact on quality of life and on the introduction of storm water to receiving waters. The Board could require that municipal agencies do some more specific work in the land use area which could have a positive impact on the quality of water in the region. Also, the Regional Board should take an active role in providing information to the public on water quality conditions in the San Diego Region.**

**The specific areas which should be addressed for jurisdictions are:  
Impervious cover, buffer requirements and recognition of watersheds in land use planning**

**And for the Regional Board: Develop a map to show location of monitoring in watersheds and an annual report (in laymen's terms) on the condition of watersheds in the San Diego Region.**

**Impervious Cover-** The late Watershed Scientist Alan Thum remarked to me that something needed to be done to curb the growth of impervious cover in watersheds in San Diego Region in order for the region's watersheds to continue to work naturally and correctly. To honor his memory I'd suggest that the amount of impervious cover be calculated in all watersheds using 2006 as the baseline. Further jurisdictions should be required to track increases in impervious cover and report to the Regional Board on the increase in impervious cover annually. This would provide a running total of the impervious cover in major watersheds in the region. Just tracking impervious cover will in itself do little, but tracking will bring awareness to the impervious cover issue, that is, there needs to be a balance between natural and covered ground for watershed to function properly.

**Buffering:** Jurisdictions with land use authority should develop uniform buffering requirements to protect receiving waters and to insure that buffers filter pollutants in storm water effectively. Monitoring should be done to determine the effectiveness of buffer widths and types of buffers and the results should be shared on a watershed basis and region wide.

**Recognition of watersheds in land use planning:**

Land Use authorities should provide statements in their planning reports on the general condition of the watershed and the impact of the proposed development will have on the watershed. The statement can be developed using information in the environmental reports which accompany land use actions. This action is intended to make decision makers and the public aware that we all live in a watershed and need to be aware of the impacts of development on watersheds.

**Regional Board Actions:**

**Develop a monitoring map:**

The Regional Board should provide a map which is accessible to the public from its web site to show location of monitoring in all major watersheds. This will help to bring awareness to the public on the location of water quality monitoring.

**Annual Report on Watersheds:**

The Regional Board should prepare an annual executive report on water quality in the San Diego Region that describes the general condition of watersheds in the San Diego Region, The report should provide information on water quality and actions which the public can take to improve water quality in all the region's major watersheds.

C

**Annual Report on watersheds – con't**

The information for the report can come from the Co-permittee's annual report to the Regional Board on the storm water permit. The Report should be distributed to media outlets in the San Diego Region.

Should you have any questions on my comments please call me at 619 447-6329 or email me at [collijo@cox.net](mailto:collijo@cox.net)

**Bob Collins**



**June 21, 2006 Regional Board Meeting  
Item 3, Supporting Document # 10**

**D. Industrial Environmental Association**



June 6, 2006

Mr. John Minan, Chairman  
San Diego Regional Water Quality Control Board  
9174 Sky Park Court  
San Diego, CA 92123

**Re: Reissuance of Municipal Stormwater Permit**

Dear Chairman Minan:

On behalf of the Industrial Environmental Association, we would like to submit the following comments relative to the reissuance of the municipal stormwater permit. Our comments are directed to the "industrial" section, D.3.b of the permit.

**Section D.3.b.: Combining Industrial and Commercial Programs:**

While we understand combining the industrial and commercial programs as a streamlining change, we believe that this combination of categories further drives the need for facility prioritization. More discussion of prioritization will follow in this letter.

**Section D.3.b.(1)(a):**

Facilities with coverage under the General Industrial Permit, or other permits with storm water requirements, such as an NPDES permit, should not be listed as high priority industrial facilities. By virtue of compliance with their existing permits, these already permitted and regulated industrial facilities should be "deemed to be in compliance" with the municipal permit. To avoid duplication of efforts, wasted resources and inefficiencies in the program, already permitted facilities should be addressed under an inspection/monitoring purview differently from otherwise unregulated facilities.

The relative comment from EPA on this issue reads as follows: "We would agree with the State Board on this matter, and that the Regional Board **would** have the authority to require inspections of all the industrial facilities listed in the permit," with the key word being "would." This indicates that the regional board does indeed have the discretion on how to categorize and prioritize their inspections.



The "Source Type" section of the permit should be revised to reflect this category of facility and also too categorize these facilities and "low" to "medium."

**Section D.3.b.(3):**

An important element of this section is "education and outreach on stormwater pollution prevention." Violations from industrial facilities should be categorized for frequency and types (paperwork, reporting errors, threat to water quality, etc.) of violations. Training programs can then be developed in cooperation with industry to address these common violations and benchmarking can be implemented to measure reductions in the number of violations. We would very much like to offer our participation and support for education and outreach on stormwater programs.

**Section D.3.b.(3)(c):**

We support the recommendation of the Copermittees that states, "The Permit should allow reprioritization of currently mandated minimum high priority industrial and commercial sources." We further support the Copermittees recommendation that "the Permit should allow and encourage alternatives to current inspection requirements."

After an initial inspection of an already permitted industrial facility, the Copermittee should have the flexibility to reduce inspection frequency to biennial or triennial or allow for self-certification with verification of the annual General Industrial Stormwater Permit certification. Self-certification could possibly be based on additional criteria in addition to the General Industrial Stormwater Permit certification that could include a facility's record of compliance, professional environmental management, an ISO 14001 or Environmental Management System in place and third-party audit reports.

**Section D.3.b.(5):**

This section of the permit requires that inspectors have authority to conduct immediate enforcement actions when appropriate to quickly correct violations and prevent threats to water quality.

We support the consideration of third-party inspectors, even without enforcement authority, particularly for the purpose of identifying non-filers and alerting Copermittees to situations that pose a threat to water quality.

If third-party inspectors are to be considered, then the following should be observed:

- the priority of third-party inspections shall be to identify non-filers

Page 3

-third-party inspection contractors shall be carefully scrutinized to avoid potential conflicts

-third-party inspection parameters will be carefully set and monitored to avoid duplication of efforts or overextending the mandates of the program

-cost-benefit analysis should be performed to compare in-house municipal inspectors versus outside contractors

-third party inspections that would result in an NOV to a facility should first be reviewed by the relevant Copermittee.

Dual-party inspections should also be considered and are an acceptable alternative to industry, combining a sanitary sewer, building department or hazmat inspection to include stormwater elements.

Thank you for considering our comments, and we look forward to participating with the Copermittees and the Regional Board to insure the success of the municipal stormwater program.

Sincerely,



Patti Krebs  
Executive Director

D

**From:** Patti Krebs <iea@iea.sdcoxmail.com>  
**To:** Hammer Phil <phammer@waterboards.ca.gov>, Robertus John <JRobertus@waterboards.ca.gov>  
**Date:** 6/6/2006 3:20:14 PM  
**Subject:** IEA Comments on Municipal Stormwater Permit Reissuance

Please see attached comments.

---

This message may contain confidential or privileged information. If you have received the message in error, please notify the sender by reply to email [iea@iea.sdcoxmail.com](mailto:iea@iea.sdcoxmail.com) and delete the message without copying or disclosing. Thank you.

---

Patti Krebs, Executive Director  
Cheryl Lartigau, Office Manager  
Industrial Environmental Association  
701 B Street, Suite 1040  
San Diego, CA 92101  
Phone: 619-544-9684, FAX 619-544-9514  
e-mail: [iea@iea.sdcoxmail.com](mailto:iea@iea.sdcoxmail.com)  
web site: [www.ieasdc.org](http://www.ieasdc.org)

**June 21, 2006 Regional Board Meeting  
Item 3, Supporting Document # 10**

**E. National Association of Home Builders**



**REGULATORY & HOUSING POLICY**  
Water & Wetlands Policy Department

May 17, 2006

Mr. Jerry Livingston  
Staff Counsel  
Building Industry Association  
9201 Spectrum Center Blvd., Suite 110  
San Diego, CA 92123-1407

Re: Review of *Alternative Approaches to Stormwater Quality Control*

Dear Mr. Livingston:

As requested, Paul Emrath and I have reviewed the *Alternative Approaches to Stormwater Quality Control*, which was prepared for the Los Angeles Regional Water Quality Control Board. Our overall reaction is threefold. First, the report is laden with unsubstantiated assumptions and cost estimates. For example, in the "Introduction" it says, "While prevailing uncertainties make an overall cost estimate only approximate at this time, costs of specific approaches are illustrated with examples."<sup>1</sup> Second, the authors admit bias in their approach. The authors set out to counter a 2002 report, *An Economic Impact Evaluation of Proposed Storm Water Treatment for Los Angeles County*<sup>2</sup> that projected extremely high costs for compliance with stormwater quality regulations. Third, the "recommendations for immediate action" are not problematic for home builders. In other words, while there are some "academic" problems with the report, our assessment is that it won't be problematic for home builders unless there are hidden agendas that are not apparent to us.

The report takes the approach of reviewing current federal and state regulations and policies to determine if compliance could be achieved through adoption of best management practices (BMPs) rather than through advanced ultrafiltration of all urban storm water runoff and to determine if the BMP approach is cost-effective. Thus, the entire report painstakingly reviews environmental regulations and policies and sets out to demonstrate that alternative approaches that focus on infiltration, source controls, improved enforcement, detention and BMP treatment, public outreach and education, good housekeeping for municipal operations, and combined approaches for stormwater quality control (on-site treatment, infiltration, BMP treatment, etc.) are appropriate alternatives to advanced treatment of all stormwater runoff. Nothing presented is original or creative, which of course makes the approaches plausible, because all of these

---

<sup>1</sup> Page 11. *Alternative Approaches to Stormwater Quality Control*. June 2004. Prepared for the Los Angeles Regional Water Control Board by Joseph S. Devanny, Sheldon Kamieniecki, and Michael Stenstrom.

<sup>2</sup>

Mr. Jerry Livingston  
May 17, 2006  
Page 2 of 6

approaches have been discussed and debated by storm water professionals for years. The only approach discussed in the report that has not been adopted widely is using wastewater treatment plants to treat dry weather stormwater runoff.

The second step in the report is to discuss the primary and secondary benefits of "runoff quality control." The discussion includes the benefits that have long been included in any discussion of the environmental benefits from controls designed to improve the quality of stormwater runoff—fishing, swimming, boating, noncontact recreation and nonconsumptive wildlife uses, reduced illness from contaminated seafood, reduced illness from swimming in contaminated waters, enhanced esthetic values, preservation of natural ecosystems, groundwater restoration, flood control, increased parkland and wildlife habitat, improved property values from trash control, and reduction in harbor sedimentation. Again, nothing presented is original or creative as these benefits are widely accepted by experts. The only benefit that is discussed in the report that has not been widely included as a benefit from stormwater runoff control is the reduced exposure to particulate air pollutants from street sweeping, which prevents resuspension of particulates from roadways, and the authors had no real data to estimate the actual public health benefit of this.

The next part of the report highlights some regional programs designed for stormwater quality control to illustrate how area-wide stormwater treatment BMPs or on-site BMPs can be an effective means to comply with regulations on a watershed basis. As with the previous sections, there isn't anything unique about the examples presented, but the examples are informative because they include actual cost data for specific BMPs. However, there is too much reliance on a Federal Highway Administration (FHWA) document<sup>3</sup> to estimate the cost of specific BMPs, because this document is a comprehensive review of the literature, so any cost estimates provided within it are actually from other sources, many of which are quite old. For example, the report attributes a formula for estimating costs for construction of open filtration basins to the Federal Highway Administration when in fact the formula came from a 1987 publication by Tom Schueler.<sup>4</sup> This misrepresentation of information is troubling and calls into question the quality of this report to some extent.

To counter the solutions presented in the 2002 report (*An Economic Impact Evaluation of Proposed Storm Water Treatment for Los Angeles County*), the authors present an estimate of costs and their recommended approach. The authors relied on case studies from which the cost of stormwater management per square mile of watershed could be estimated. While the authors readily admitted the caveats of their estimates, they again included examples from the Federal Highway Administration document mentioned above, which is inappropriate. The authors did include examples taken from the ASCE-EPA BMP Database, which has very rigid standards for data inclusion, so at

<sup>3</sup> FHWA, 2003. Stormwater Best Management Practices in an Ultra-Urban Setting: Selection and Monitoring.

<sup>4</sup> Schueler, T.R. 1987. Controlling Urban Runoff: A Practical Manual for Planning and Designing Urban BMPs. Metropolitan Washington Council of Governments, Washington, DC.



Mr. Jerry Livingston  
May 17, 2006  
Page 3 of 6

least part of the data is credible. One other concern with the data presented is the lack of information regarding how graphs were constructed. For example, in Figure 2 (page 59 of the report) it is impossible to determine what each data point represents. As a result, it is impossible to know if the trends depicted by the graph are valid. In spite of the scant data presented, the authors suggest that two possible scenarios for stormwater quality control are warranted from a cost effectiveness perspective. The first is to rely on non-structural controls; the second is to give priority to non-structural controls along with a network of wetlands and infiltration basins to capture the first 3/4" of rainfall.

The authors go on to recommend that municipalities begin at once to assess stormwater quality on a neighborhood basis and to implement non-structural controls. The authors assert that as the success of these controls is measured that it will become obvious whether or not structural BMPs are needed. They also state that their estimates to implement controls to comply with regulations would range from a minimum budget for non-structural controls to the cost of implementing an area-wide system of wetlands and infiltration basins. The remainder of the cost section is devoted to a list of non-structural BMPs and their associated implementation costs, a discussion of the cost to comply with the 3/4" rule for new development, and the cost of wetlands and infiltration basins.

It is worth mentioning the discussion in the report regarding how much it costs for builders to capture and treat the first 3/4" of rainfall. In this discussion, the authors mention the opposing views in terms of how much it costs to comply with this rule, but go on to say:

"Experts contacted during this study were of the general opinion that landscaping designed to infiltrate the runoff from a 3/4-inch storm would be different, but not significantly more expensive, than traditional landscaping. On the other hand, engineers in the discipline believe that most builders are choosing treatment systems rather than infiltration. The stormwater control costs will likely be a small fraction of building costs. Ultimately, we have concluded that there are not sufficient data to make a numerical cost estimate. The costs are therefore described here only as "modest", and further study is recommended. (page 64 of report)

While the authors recommend further study, the recommendations of this report do not hinge on that value, so it probably isn't worth getting into a discussion about the facts here.

The next section of the report presents the authors view of the "Overall Benefits of Stormwater Quality Control." Dr. Paul Erath, economist in NAHB's Housing Policy Department, prepared the following comments in response to this section. His review focused on evaluating the way that benefits are estimated

*The Esthetic Value of a Clean Ocean.* This section is based on willingness-to-pay studies (surveys that ask respondents how much they would be willing to pay for various public amenities). Willingness-to-pay has been subject to a variety of criticisms, such as speculation that respondents don't answer questions the way they would if they really had

Mr. Jerry Livingston  
May 17, 2006  
Page 4 of 6

to pay. However, there usually isn't a good alternative, so in most cases willingness-to-pay can be successfully defended as the best data available.

The report manipulates willingness-to-pay results from an EPA study to show that the average person would be willing to pay \$188 to improve water quality up to a level sufficient to support natural aquatic life. The report assumes that stormwater control will achieve all \$188 largely because the water in the LA basin is in such poor condition. This is generally a reasonable approach. Because the EPA analysis and the discussion of water in the LA basin all deal with *freshwater*, however, there is a question about what this material is doing in the "value of a clean ocean" section.

To the \$188 the study adds \$82 per person from a study by Soderqvist, to account for how much people are willing to pay to reduce eutrophication (nutrient pollution). Some may question the relevance of the Soderqvist study because its willingness-to-pay data come from Sweden. A more serious issue, however, is whether the \$82 can be added to the \$188, or whether this results in double counting. Improving water quality so that it supports natural aquatic life and reducing pollution seem like two ways of measuring the same thing, and so should not be added together.

*Ecosystem Services.* This section is based on an estimate of coastal system value per year worldwide, LA's share of this, a 3% discount rate, and stormwater control contributing 5% to this. Kind of clever, although there's no justification at all for the discount rate or the 5%. They don't explicitly state how long the stream of benefits they're measuring is expected to last.

This category includes value of fishing and so on, so it would be double counting if included in the "esthetic value of a clean ocean" section. The first section may refer entirely to freshwater and the second to ocean coastline, but this is not at all clear.

*Additional Water Supply.* The method sketched in this section seems generally okay, but none of the numbers used are documented. The estimate of the benefit is reduction of flood insurance by \$400 million (from \$466 million), assuming that stormwater control would avoid most of the insurance cost. Many people may find this reasonable, but critics will ask for evidence that insurance companies have reduced flood insurance premiums by a number approaching 85% as a result of stormwater control.

*Property Value Improvements from Greenspace and Water.* This section relies heavily on a reference to the 1993 NAHB paper by Emrath, which is now dated. NAHB's paper has been updated three times since then, with some significant advances in the model that estimates the impact of body of water on home values since 1993—including the ability to produce specific results for the California coast. Results from the most recent version are available on NAHB's Web site:  
<http://www.nahb.org/generic.aspx?sectionID=784&genericContentID=32911>.  
It's difficult to see how the study gets to the result it reports from the material produced by NAHB.

Mr. Jerry Livingston  
May 17, 2006  
Page 5 of 6

*Improved Property Values from Trash Control.* This section is highly speculative. There is basically no justification for the estimate of \$100 person at all.

*Cost Savings from Reduced Dredging.* The procedure for generating these estimates seems generally okay. Again, the sources of the numbers they use could be better documented. This is especially important in this section, because the estimated benefits in it are so large.

In summary, the benefits section of the report is not based on any new, original research. It basically patches together results from other studies. There's nothing wrong with this. Given a finite research budget, it's often the only option available. The report makes use of information from a wide variety of sources, often in a clever manner. However, the benefits section is generally too brief to be fully persuasive. There is a need for a few cases where fuller description is provided; and, for an analysis that relies so heavily on previous work, source documentation is insufficient. For one or two of the estimated benefits, the justification is essentially non-existent.

The final section of the report describes the "Recommendations for Actions." The authors recommend that municipalities "begin immediately to implement non-structural BMPs, analyze their effectiveness, and add wetlands and infiltration systems as necessary to achieve the goal of protecting the rivers and coastal zones of the Los Angeles Region." (page 73 of report) They support these recommendations by saying that their results indicate "that the benefit-to-cost ratio for non-structural BMPS is about 2, and for the larger effort is about 3." (page 73 of report) The specific recommendations for actions are as follows:

"Municipalities that have the responsibility for meeting runoff quality regulations should take some immediate steps.

- Outreach programs, explaining to citizens the need for runoff quality control and discouraging illegal discharges such as littering, should begin.
- Data should be collected on the stormwater discharges from subwatersheds to determine what BMPs are workable, and general plans should be updated to include policies that promote stormwater control.
- An administrative structure should be established which includes the relevant stakeholders and funding agencies for each watershed (such as watershed councils).
- Funding plans should be developed.
- Building codes that work against runoff quality control should be changed immediately—in particular, all parking lots built from now on should also be stormwater infiltration systems.
- All new street cleaning equipment should be high-quality vacuuming systems.
- Appropriate agencies should be encouraged to use the latest microbiological techniques to investigate sources of pathogenic organisms in runoff, so that mitigation efforts can be optimally designed."<sup>5</sup>

---

<sup>5</sup> Ibid, pages 9-10.

E

Mr. Jerry Livingston  
May 17, 2006  
Page 6 of 6

In conclusion, NAHB believes that while the report has some shortcomings, the recommendations as presented do not add requirements on home builders. In fact, if these recommendations were implemented, and if the authors of the report are correct in claiming that this approach is more cost effective than other approaches, the cost to develop land should not escalate significantly. However, I must point out that the authors have taken a naïve approach in their recommendations and fail to recognize how difficult, how costly, and how long it could take for municipalities to assess the effectiveness of non-structural BMPs, much less how they will take the next steps to change what they are doing so that water quality goals are met.

I hope that these comments are helpful. If you have questions, please don't hesitate to contact me (ext. 8157) or Paul Emrath (ext. 8449).

Sincerely,

*Marilyn J. Parson, Ph.D.*

Director, Environmental Policy

**June 21, 2006 Regional Board Meeting  
Item 3, Supporting Document # 10**

**F. Natural Resources Defense Council**

F

**From:** "Beckman, David" <dbeckman@nrdc.org>  
**To:** "Phil Hammer" <PHammer@waterboards.ca.gov>  
**Date:** 5/15/2006 3:47:50 PM  
**Subject:** Coastkeeper Request

Phil, NRDC would like to join the Coastkeeper request for additional time to comment on the current draft SD MS4 permit.

In addition to the reasons mentioned by Coastkeeper, NRDC requests additional time for the following specific reason. As you know, NRDC is engaged in a substantial project to analyze the efficacy of the current SUSMP program in San Diego. This project is intended to yield valuable information on the effect of the program, in terms of pollution reduction, as well as yield fact-based recommendations for improvements to the program, including making the program more supportive of LID-based approaches. We have had, as you know, a lot of difficulty in obtaining basic data and information from the cities, and have had to issue Public Records Act requests. We are only now getting preliminary responses. In addition, notwithstanding your assistance, we have had a long delay in getting the most basic information, Annual Reports, from the Regional Board itself.

Since our work involves actual review of permits issued and considerable expert analysis by Dr. Richard Horner, we anticipate needing until early-to-mid-July to prepare this report and recommendations. We want this to be part of our comments for the record. We believe this work will be of use and value to the RWQCB and to all stakeholders as it will allow a fact-based assessment of the effectiveness of one of the most important permit components. Development practices and patterns, as you know, are instrumental aspects of the control of runoff pollution.

If the Regional Board is not able to reschedule the June 21 hearing, it would still be possible for you to extend the comment deadline independently. This is a common approach, most recently used by the State Board in connection with its hearings on the 303(d) list (i.e., comments were accepted for a period after the regional hearings).

Thank you for considering this additional basis for the Coastkeeper request and please forward this to John Robertus, for his information. Thank you for your assistance with our various information requests.

David

David S. Beckman

F

Senior Attorney & Director, Coastal Water Quality Project  
Natural Resources Defense Council

**PRIVILEGE AND CONFIDENTIALITY NOTICE**

This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure under applicable law as attorney client and work-product confidential or otherwise confidential communications. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication or other use of a transmission received in error is strictly prohibited. If you have received this transmission in error, immediately notify us at (310) 434-2300.

**CC:** "Alsentzer, Dorothee" <dalsentzer@nrdc.org>

**June 21, 2006 Regional Board Meeting  
Item 3, Supporting Document # 10**

**G. Pardee Homes**





10880 Wilshire Boulevard, Suite 1900  
Los Angeles, California 90024-4101

Phone: (310) 446-1240  
Fax: (310) 446-1292  
E-Mail: amy.glad@pardeehomes.com

AMY GLAD  
Vice President, Governmental Affairs

June 7, 2006

San Diego Regional Water Quality Control Board  
9174 Sky Park Court, Suite 100  
San Diego, CA 92123

2006 JUN -8 P 12:00  
SAN DIEGO REGIONAL  
WATER QUALITY  
CONTROL BOARD

**RE: Comments: Reissuance of Order No. 2001-0001, The San Diego  
Municipal Storm Water Permit (Tentative Order R9-2006-0011)**

Dear Honorable Regional Water Board Members:

As a builder in San Diego County we have concerns with the Reissuance of Order No. 2001-0001 The San Diego Municipal Storm Water Permit. We believe that by increasing the timeframe to develop and implement a Hydromodification Plan (HMP) to thirty-six (36) months, removing acreage limitations to grading operations, and reconsidering recommendations of Advanced Treatment would improve the proposed permit environmentally, technically and legally.

These modifications would assist with the development of a standard set of construction site practices, providing continuity necessary for the development of effective regional management plans, while also allowing the Copermittees to best allocate their limited resources and collective expertise to develop a set of construction site practices that are protective of the environment, feasible, and legally defensible.

**Hydromodification Timeline Extension**

We feel the time frame established in Section J.4 is insufficient for preparation of the HMP, which is approximately two years from adoption of the permit. We respectfully request an extended timeline of thirty-six (36) months for HMP preparation due to (1) the larger amount of physical data to be gathered and calibrated, (2) the need to develop management practices and sizing criteria specific to San Diego County, and (3) the need to assemble a panel of appropriately licensed experts to review the HMP.

The Copermittees will require a considerable amount of time for gathering field data and historic data and calibrating the model for San Diego County's many varied watersheds. The short time frame for preparation of the HMP will not leave sufficient time to devise management strategies tailored specifically for San Diego County after the calibration process is completed. During the previous permit cycle, the Copermittees had an organizational structure in place to develop the Model Standard Urban Stormwater Management Plan (SUSMP). Additionally, the City of San Diego

was able to commit an in-house expert to prepare the Model SUSMP. These factors allowed the Copermittees to make use of the full schedule for preparation of the Model SUSMP.

The time frame for Santa Clara County was four years from permit adoption, twenty-three months from the submittal of base data to completion of the final HMP report. The time frame proposed for San Diego County is just twenty-three months total, including data gathering and model calibration, an insufficient amount of time to develop a safe, reliable, and effective HMP.

Although the type and sizing of best management practices may differ from other counties, the ultimate intent is the same. Because counties in Northern California have only recently adopted their HMPs, there is no real world project experience to confirm that the types and sizing of the Best Management Practices (BMPs) adopted elsewhere will actually work. A prudent time extension would also avoid costly mistakes and irreparable harm to the environment by allowing to the Copermittees to observe and learn from other jurisdictions.

### **Grading Limitation**

The Draft Order requires grading limitations to a maximum disturbed area to be determined by each Copermittee. The Technical Report references the CalTrans permit, which specifies that no more than seventeen acres of active grading be exposed unless otherwise approved by the CalTrans engineer in writing. CalTrans projects are linear in nature and while imposing grading limits on a linear project may reduce the site exposure, imposing the same limitations on residential development may indeed increase the site's overall exposure by extending the timeline of grading operations.

As an alternative to limiting the amount of exposed area during grading operations, it would be more effective to implement phased finished-grading with the use of an erosion control plan as currently mandated in the construction permit. By controlling the cut and fill areas in the context of an overall site plan, the grading contractor is able to redirect areas with disturbance and prevent stormwater from leaving the site. The efficiency of grading the entire site and completing infrastructure improvements concurrent with erosion control BMPs limits the overall site exposure during grading and is more effective than limiting the grading area and extending the timeline of disturbance on the site.

### **Advanced Treatment**

Section D.2.c.(1)(f), page 27 of the Draft Order requires slope stabilization on all active slopes during rain events regardless of the season, unless Advanced Treatment is being implemented downstream of the slope. Attachment C to the Draft Order defines Advanced Treatment as using mechanical or chemical means to flocculate and remove suspended sediment from runoff prior to discharge. This definition is further expanded in the Technical Report to consist of three part treatment of coagulation, sedimentation, and polishing filtration.

Most construction sites in San Diego County are located within a watershed tributary to a 303(d) impaired water body for silt and sediment. Thus it is probable that the Draft Order would mandate Advanced Treatment for most construction sites. Whenever a new BMP is mandated, the Regional Board must consider four factors. Is it environmentally safe? Is it technically feasible? Will it achieve the desired water quality outcomes? Can a specific BMP be imposed?

Many BMPs can be implemented on a construction site to reduce significantly the threat to water quality that may be safer and more effective than employing Advanced Treatment measures. Other options should be exhausted before Advance Treatment is mandated. Even in the worst case scenario, a slope that is not stabilized prior to a rain event may not result in a discharge of sediment offsite.

Due to the variable nature of construction activity generating numerous and variable runoff locations, the current process of review and analysis of the site and implementation of site specific BMPs is a better solution than mandating the use of Advance Treatment. An effective combination of sediment and erosion control, as well as site design and source control BMPs, will reduce the potential threat to water quality of storm water runoff from a construction site.

We believe that by increasing the timeframe to develop and implement a HMP, removing acreage limitations to grading operations, and reconsidering Advanced Treatment concepts would improve the permit in its overall goal of improving water quality. These revisions would correct many of the legal difficulties arising out of the current language, allow the Copermittees to best allocate their limited resources and collective expertise gained during the last permit cycle and develop a set of construction site practices that are protective of the environment, feasible, and legally defensible.

Thank you for your time and consideration.

Sincerely,



Amy L. Glad

ALG/cg

Copy to: Beth Fischer (Pardee Homes)  
Allen Kashani (Pardee Homes)  
Jerry Livingston (BIASD)

**June 21, 2006 Regional Board Meeting  
Item 3, Supporting Document # 10**

## **H. Project Design Consultants**

H



PROJECT DESIGN CONSULTANTS

701 B STREET, SUITE 800  
SAN DIEGO, CA 92101

619.235.6471 TEL  
619.234.0349 FAX

WWW.PROJECTDESIGN.COM

June 6, 2006

Mr. John Minan, Chair  
San Diego Regional Water Quality Control Board  
9174 Sky Park Court  
San Diego, CA 92123

2006 JUN - 1 P 2:11  
SAN DIEGO REGIONAL WATER QUALITY CONTROL BOARD

**SUBJECT:** Tentative Order Number 2006-0011

Dear Chairman Minan:

I appreciate the opportunity to comment on Tentative Order Number 2006-0011, which deals with a new municipal storm water permit. After reviewing the Draft Order and supporting documents, attending both public workshops, serving on the Building Industry Association's stormwater taskforce and reading the Regional Board Staff's (Staff) early responses to the taskforce's questions I have a number of comments.

My initial comments deal with the Hydromodification requirements within the permit (Section D.1.g). Currently the Draft Order calls for the Copermittees to adopt a Hydromodification Plan (HMP) within 23-months. I suggest that the permit be revised to include a timeline of 36-months for the adoption of a HMP.

Other jurisdictions in California have required more time, in some cases significantly more time, to develop their programs; Santa Clara County took four years with over two years being spent just on collecting and calibrating the necessary field information. San Diego County is approximately four times the size of Santa Clara County and contains more watersheds. Staff has suggested that the efforts of other counties in California would allow San Diego to develop an HMP in a shorter period of time. Unfortunately this response fails to consider the differences in climate, geology and topography that must be considered in developing a realistic timeframe. Experts involved in the preparation of the Santa Clara HMP have indicated that their model is not directly transferable to San Diego. Even assuming that the Santa Clara model represents the best modeling choice for San Diego, local data collection and calibration would be needed.

Another factor to consider is the benefit the extra time would allow the Copermittees in reviewing successes and failures of programs in other counties. At this time, the HMP programs elsewhere in California are so new that results regarding their implementation are not available. Over the next 36-months, projects will move through the permitting process, enter construction and see occupancy. Thus the additional time would allow San Diego to



learn from any shortcomings in other County's programs and incorporate solutions into our program; thereby avoiding similar mistakes.

It is also unlikely that the Copermittees will be able to develop an HMP without hiring an outside consultant to assist with the effort. Hiring an outside consultant takes time and the 23-month timeframe does not appear to account for this need. I would suggest that the formation of a taskforce composed of local experts could assist in providing feedback on an HMP to an outside consultant. This would provide access to a larger body of experts that could share their insights and provide detailed technical feedback. This process has worked successfully on the recent County of San Diego Hydrology Manual (released 2001), County of San Diego Drainage Design Manual (released 2005) and the recent SUSMP process. In all three examples cited, the use of a taskforce aided in delivering a well received, quality product in a timely manner.

Lastly, because the 23-month timeframe is insufficient to develop an HMP tailored to San Diego, it is most likely that the Santa Clara County HMP would be "rubber stamped" for use in San Diego. This would be an unfortunate application of a program that was not developed for use in San Diego and could have significant unforeseen impacts, including potentially creating adverse conditions and a worsening of the political environment for future endeavors. For these reasons, I strongly recommend an extension of the timeframe to allow Staff, Copermittees and local experts the time necessary to develop a successful HMP.

A second concern deals with the Advanced Treatment portion of the permit (Section D.2.c.). I suggest that this portion of the permit be modified, sending the discussion of when Advanced Treatment is necessary back to the Copermittees for their consideration. The Copermittees could then incorporate Advanced Treatment requirements into their grading ordinances and construction processes in a manner suitable for each jurisdiction and watershed.

The Draft Order currently requires Advanced Treatment for sediment at construction sites that are determined to be a significant threat to water quality. A review of the factors contained within the Draft Order used to define what Staff considers to be a significant threat reveals that nearly all construction projects within the region would be affected by this requirement. The Draft Order further states that Advanced Treatment consists of three components – coagulation, sedimentation and polishing filtration. Based on the supporting documents, the only flocculent that appears to have been tested for safety or efficacy is Storm-Klear Gel-Floc™. Thus, the permit has established a mandated monopoly for this product. In the past Staff has gone to great lengths to avoid specifying a specific BMP for use in any given situation. While I will leave it to the lawyers to debate the legality of this position, I respectfully suggest that other construction BMPs may provide similar or better protection of water quality. Consideration of the site-specific conditions and a myriad of other factors must be made to select the most appropriate BMP for use in a given situation. Diminishing Owners' and Copermittees' ability to continually monitor and implement the



most effective BMPs on a construction site could severely impact achieving the desired water quality goals.

A third concern deals with the limitations on grading area contained within the Draft Order (Section D.2.c). I suggest that this portion of the permit be modified, sending the discussion of grading limits back to the Copermittees for their consideration. The Copermittees could then propose BMP requirements and an approval process for projects wishing to disturb larger areas. This would change the focus of the Draft Order from an arbitrary acreage limit that may have significant unforeseen impacts to a site-specific examination of project requirements.

A 17-acre grading limit could have the unforeseen effect of adding temporary sewage lift stations because of an inability to complete utility construction; actually cause greater areas of disturbance due to the need for temporary slope grading to facilitate the phased nature of grading to meet the arbitrary limits; increase hauling requirements of dirt on large projects to offsite locations to achieve a balanced earthwork and create temporary site distance deviations on roads until future phases are graded. Lastly, this requirement could require grading operations to extend over a longer period of time. Thus, while the exposed area might be lessened, the likelihood of a larger storm event striking a site while there are exposed areas would increase.

These examples are just some of the potential impacts this requirement could have on projects that would negatively affect water quality and public safety. I strongly recommend that the setting of a grading limit be referred back to the Copermittees for their consideration. I feel that the Copermittees can adopt a process whereby a contractor could disturb up to a certain acreage limit, with the Copermittees retaining the ability to authorize greater disturbances where necessary with the appropriate water quality protection.

A final concern is the continued absence of a program that will provide real water quality improvements for the region. This Draft Order continues the recent trend of focusing regulatory efforts on new development and except for sampling requirements, pays little attention to existing areas or existing infrastructure. While I understand the desire to prevent a loss of beneficial uses due to new developments, the failure to incorporate existing areas of the region into a program ensures that future water quality at our beaches, bays and streams will not be dramatically altered due to this Draft Order.

Given the continued spiraling of costs to the Copermittees and developers to meet Staff's requirements one has to consider the cost effectiveness of our current approach. I understand that it is easy for the Staff to recommend that private developers pay ever-increasing amounts of money on water quality issues. However, Staff as recently as the second public workshop firmly and emphatically stated that they would not engage in assisting the Copermittees with raising funds to pay for the activities Staff was requiring.

H



PROJECT DESIGN CONSULTANTS

Chairman John Minan  
June 6, 2006  
Page 4 of 4

Leadership in the stormwater arena is not defined by having the strictest permit requirements or the least number of environmental lawsuits. Rather leadership is the establishment of a vision and the courage to build the consensus to make the vision a reality. I believe the Staff is working hard on their water quality vision for the San Diego region. I look forward to the Board demonstrating the leadership to forge a consensus with all the stakeholders on one vision and then working with the stakeholders to enact that vision. As with most difficult issues, the hard part is not in identifying the problem, it lies in forging a path to success.

I appreciate the opportunity to comment on Tentative Order 2006-0011. Please contact me if you have any questions or would like to discuss the above or other issues.

Sincerely,

PROJECT DESIGN CONSULTANTS

Richard P. Hall, PE, CFM  
Assistant Vice President

cc: Executive Committee  
file