

EXECUTIVE OFFICER SUMMARY REPORT
April 11, 2007

ITEM: 9

SUBJECT: Reissuance of the Orange County Municipal Storm Water Permit, Waste Discharge Requirements for Discharges of Urban Runoff from the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds of the County of Orange, the Orange County Flood Control District, and the Incorporated Cities of Aliso Viejo, Dana Point, Laguna Beach, Laguna Hills, Laguna Niguel, Laguna Woods, Lake Forest, Mission Viejo, Rancho Santa Margarita, San Clemente, and San Juan Capistrano. (Tentative Order No. R9-2007-0002, NPDES Permit No. CAS0108740) (Jeremy Haas)

PURPOSE: Today's public hearing will provide the Regional Board with the opportunity to hear public testimony on Tentative Order No. R9-2007-0002. Consideration of adoption of the Tentative Order is tentatively planned for the regularly scheduled Board meeting on June 13, 2007.

PUBLIC NOTICE: Interested persons and the general public have been notified in accordance with California Water Code Section 13167.5, the State Water Resources Control Board Administrative Procedures Manual (Chapter 1), and Code of Federal Regulations Title 40 CFR Part 25. A public notice of this item was distributed to all known interested persons and posted on the California Regional Water Quality Control Board, San Diego Region, (Regional Board) web site on February 22, 2007. A notice of this public hearing was also posted for the general public in the Orange County Register on February 27, 2007.

In addition, the following notice was included on the April 11, 2007 Board meeting agenda: *The official public review and comment period for the Tentative Order began February 9, 2007. Written comments or testimony on the Tentative Order should be submitted to the Regional Board as soon as possible, but no later than April 4, 2007. Only written comments or testimony received by 5:00 PM on*

April 4, 2007 will be provided to the Regional Board members for their consideration prior to the April 11, 2007 public hearing. The Regional Board will receive and consider oral statements at the April 11, 2007 public hearing. Upon conclusion of testimony on April 11, 2007, the current schedule calls for closing the public hearing and comment period.

DISCUSSION:

Tentative Order No. R9-2007-0002 is the proposed reissuance of the Orange County Municipal Storm Water Permit (Order No. 2002-01). The Tentative Order serves as both Waste Discharge Requirements and a federal National Pollutant Discharge Elimination System permit. The Tentative Order requires the County of Orange, the Orange County Flood Control District, and the 11 incorporated cities of Orange County in the San Diego Region (Copermittees) (Supporting Document No. 1) to reduce the discharge of pollutants from their municipal separate storm sewer systems (MS4s) to the maximum extent practicable (MEP).

Pollutant discharge reduction is accomplished through the Copermittees' implementation of comprehensive urban runoff management programs. These urban runoff management programs are to be implemented on jurisdictional and watershed levels, depending upon the scale of the water quality issues being addressed.

Background and Permitting Approach Summary

Tentative Order No. R9-2007-0002 (Supporting Document No. 2) builds upon the current Orange County MS4 Permit, with many of the same or similar requirements. Proposed changes are presented in detail in the Fact Sheet/Technical Report (Supporting Document No. 3).

The Tentative Order includes changes to the current Orange County MS4 Permit made in response to (1) the Report of Waste Discharge (ROWD); (2) new information; and (3) knowledge and experience gained by the Copermittees and Regional Board during the current permit cycle. Supporting Document No. 4 provides a comparison of the Tentative Order requirements to the current Orange County MS4 Permit. Certain program components have been either de-emphasized or accentuated. Some of the changes have been proposed by the Copermittees (see Supporting Document No. 5). For each section of the Tentative Order

that has been significantly modified, the Fact Sheet/Technical Report includes a description of the change and a discussion of the rationale behind the change.

The Tentative Order contains an increased emphasis on urban runoff management on a watershed basis by emphasizing the consideration of impaired water bodies in management decisions and by strengthening the watershed urban runoff program requirements. The purpose of this increased emphasis is to shift the focus of the Copermittees from program development to water quality results. After 17 years of Copermittee program implementation, it is critical that the Copermittees link their efforts to positive actions that improve water quality. Addressing urban runoff management on a watershed scale focuses on water quality results by emphasizing the connectivity of the receiving waters within the watershed. The conditions of the receiving waters will drive management actions that address the water quality problems of the receiving waters in each watershed.

The Tentative Order seeks to provide the Copermittees flexibility to appropriately manage their programs while also ensuring the ability of the Regional Board to assess whether the discharge of pollutants is being reduced to the MEP. To achieve this, the Tentative Order frequently prescribes minimum measurable outcomes, while allowing the Copermittees to determine the approaches to meet those outcomes. For example, the Tentative Order requires a certain number of inspections of commercial and industrial sites, but provides the Copermittees with flexibility in determining which commercial and industrial sites to inspect. This allows the Copermittees to both measure and manage performance of the programs.

Significant Changes from the Current MS4 Permit

1. Additional program emphasis is placed on areas draining to impaired water bodies and environmentally-sensitive areas. (Sections D.1, D.2., D.3). The emphasis on high-priority concerns is meant to focus program resources.
2. Program effectiveness assessments must be developed in accordance with guidance provided by the California Storm Water Quality Association (Section G).

3. More new development and redevelopment projects will be subject to numeric design criteria for treatment best management practices (Section D.1.d). This change is similar to the new San Diego MS4 Permit.
4. Hydromodification requirements for new development and significant redevelopment projects are emphasized (Section D.1.h). Criteria have been included to clarify the intent of hydromodification requirements. Criteria are based upon findings from the Southern California Coastal Water Research Project Authority.
5. More emphasis is placed on retrofitting flood control structures (Section D.3.a.4). These requirements have been modified to more closely meet federal regulations and are supported by findings from the Copermitttees' programs. Criteria are clarified for evaluating the feasibility of retrofitting flood control structures.
6. Implementation of activities is required in the Watershed Program section (Section E). This change is meant to ensure pollutant-reduction activities are conducted.
7. A long-term funding plan must be developed during the permit term and fiscal benefits of the program must be identified (Section F). These management measures are meant to ensure the feasibility of long-term program commitments and are based on recommendations from a U.S. EPA-sponsored report from the National Association of Flood and Stormwater Management Agencies. Those activities will provide more useful assurances that fiscal resources can be available for implementing the activities of the jurisdictional runoff management plans. On December 14, 2005, Regional Board staff conducted a public workshop on fiscal assurance requirements of municipal storm water programs. The Board commented that standardization was useful for comparative purposes, but that, ultimately, program implementation is the primary objective. The long-term funding plan is a management measure to ensure sustained program implementation.
8. The Monitoring Program has been modified in response to data (Attachment E to the Tentative Order). The new monitoring requirements provide additional detail to include in the program for each of the types of monitoring

stations. One new type of station has been added, and some requirements have been reduced.

Process Used for Tentative Order Development

The process for reissuance of the MS4 Permit has included meetings with the Copermittees, a public workshop, and distribution of relevant materials to all known interested parties. On April 6, 2006 and July 26, 2006 Regional Board staff met with the Copermittees to discuss the type of information that should be provided in the application for re-issuance of the MS4 Permit. The application with ROWD was received on August 18, 2006. Comments regarding the ROWD were then provided to the Copermittees and certain interested parties on October 20, 2006. On January 11, 2007 all known interested parties were notified that an electronic e-mail list was established to provide information to interested parties. The Tentative Order was then distributed on February 9, 2007. A public staff workshop was conducted in Orange County on March 12, 2007.

Based upon comments at the March 12, 2007 public workshop, several key issues remain and are briefly listed below under "Key Issues." Additional important issues may be raised within written and oral comments not yet reviewed. All comments received by 5:00 PM April 4, 2007 will be provided to the Regional Board with the Supplemental Executive Officer's Summary Report.

Purpose and Procedures for Public Hearing

The purpose of the April 11, 2007 public hearing is to provide interested parties the opportunity to formally present their comments and concerns regarding the Tentative Order to Regional Board members. However, because staff has not yet prepared written responses to all comments received, the Regional Board is not scheduled to take formal action on the Tentative Order at the public hearing. The Regional Board may close the public comment period at the conclusion of the hearing.

Consideration of Adoption of Tentative Order
No. R9-2007-0002

The Regional Board is tentatively scheduled to consider adoption of the Tentative Order at its June 13, 2007 meeting. This schedule will allow staff to prepare two important documents for Regional Board member review prior to decision making on the Tentative Order. Comprehensive written responses to all significant written comments received will be provided to the Regional Board members in advance of the June 13, 2007 Regional Board meeting. A revised final draft of the Tentative Order, incorporating applicable changes in response to appropriate comments and Regional Board direction, will also be provided to the Regional Board in advance of its June 13, 2007 meeting.

In the event that the Regional Board extends the written comment period beyond April 11, 2007, it may not be possible to have the Regional Board consider adoption of the Tentative Order at the June 13, 2007 Regional Board meeting. The subsequent Regional Board meeting date for consideration of adoption of the Tentative Order would be August 8, 2007.

KEY ISSUES:

1. Regional Storm Water Treatment. The Copermittees do not want to be restricted from placing regional treatment BMPs within receiving waters. The current MS4 Permit and the Tentative Order require that storm water pollutants be reduced to the MEP prior to being discharged into receiving waters. Regional treatment measures are not prohibited as long as treatment occurs prior to the discharge of pollutants to receiving waters.
2. Fiscal Analyses. The Copermittees prefer to develop standardized annual fiscal analyses, rather than individual long-term funding plans. They are also concerned with the feasibility of estimating fiscal benefits of local programs.

LEGAL CONCERNS:

Comments regarding specific legal issues have not yet been received. Legal comments are expected prior to April 4, 2007 and will be included in the Supplemental Executive Officer's Summary Report.

**SUPPORTING
DOCUMENTS:**

1. Map of Orange County within the San Diego Region
2. Tentative Order No. R9-2007-0002
3. Fact Sheet for Tentative Order No. R9-2007-0002
4. Comparison of Tentative Order No. R9-2007-0002 with the new San Diego County MS4 Permit and the existing Orange County MS4 Permit.
5. Commitments made by the Copermittees in the Report of Waste Discharge.

RECOMMENDATION:

It is recommended that the Board receive public testimony at today's hearing.