



THE CITY OF SAN DIEGO

May 13, 2009

bneill@waterboards.ca.gov

Mr. John Robertus, Executive Director
San Diego Regional Water Quality Control Board
9174 Sky Park Court, Suite 100
San Diego, CA 92123

Dear Mr. Robertus:

Subject: City of San Diego Comments on the Tentative Municipal Storm Water Permit for South Orange County, NWU:658018:bneill

The City of San Diego wishes to provide the Regional Water Quality Control Board with comments regarding the tentative south Orange County Municipal Storm Water Permit. We understand the need to continue moving forward with water quality improvements. We believe that these improvements need to be studied and well thought out to maximize our water quality efforts in a cost effective and efficient manner. Based on review of this tentative permit, we request that it be reviewed to determine if it is consistent with other municipal storm water permits across California as specified in the State Water Resources Control Board Strategic Plan.

If you have any questions or require more information, please don't hesitate to contact Ruth Kolb at (858) 541-4328.

Sincerely,

Kris McFadden
Deputy Director

Enclosure: City of San Diego Comments on Draft Orange County Municipal Permit (Tentative Order No. R9-2009-0002)

cc: Tony Heinrichs, Director
Ruth Kolb, Storm Water Specialist
Drew Kleis, Storm Water Specialist
Chron File



Storm Water Department

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CITY OF SAN DIEGO COMMENTS ON DRAFT ORANGE COUNTY MUNICIPAL PERMIT (TENTATIVE ORDER NO. R9-2009-0002)				
Permit Section	Permit Page	Section Title/Topic	Reason for Proposed Changes/Comments	Comments/Proposed Changes
NOTE- Please enter your comments according to the example comment below. Insert additional rows as necessary.				
FINDINGS				
	3	Table 2A	Row: Aliso Creek uses the term "toxicity."	Specify what kind of toxicity?
C.1.	2		"Runoff from an MS4 contains waste..."	"may" contain waste
C.2.	2		"Municipal storm water...discharges are likely to contain..."	"may" contain
C.14	6	Runoff Management Programs	Discharges exempted are still required to be addressed through prohibition if they are identified as a source of pollutants. If specific types of discharges are known to be a source of pollutants and contribute to the degradation of water quality, they should not be exempt.	The finding should state that discharges identified as a source of pollutants should be addressed and not include discharges that are known sources of pollutants as exempt.
C.14.	6		Non-storm water discharges...are to be effectively prohibited...	Prohibiting flow will dry up wetlands; violation of US Army Corps of Engineers permit
D.1.h.	8	Runoff Management Programs	Basing MALs on nationwide MS4 data is not appropriate for this region.	
D.4.a	12	Runoff Management Programs	This is a very important finding that should be kept within the permit as finalized and should be included in future MS4 permits throughout the region.	"Watershed management of runoff does not require Copermitees to expend resources outside of their jurisdictions."
E.6	13	Legal Authority	Finding claims that the permit is not an unfunded mandate with one reason listed as "the local agency...[has] the authority to levy service charges, fees, or assessments sufficient to pay with this Order."	The finding should acknowledge that under State law, local agencies cannot levy assessments or property related fees without a majority vote of the affected electorate or affected property owners.
E.6	13	Legal Authority	Finding E.6 states one reason why the permit is not an unfunded mandate is that the copermitees have "requested permit coverage... in lieu of numeric restrictions on their discharges." Yet MALs are a condition imposed within this permit and the technical fact sheet in the discussion of finding D.1.h confirms that MALs are a form of numeric limits	If MALs remain a requirement, the finding should not be made that this permit does not constitute an unfunded mandate.

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			All references to human health need to be removed	This is not a public health permit
Discharge and Legal Provisions				
	21		Table 3: MBAS, all metals	MBAS AL is lowered. Metals #'s are not correlated to a hardness... how to interpret this?
D. 1.	21		Beginning year 3...	If we fall under this category, we have to "affirmatively augment and implement all necessary stormwater controls and measures to reduce the discharge," and after that, we get penalized?
D.3	22	Municipal Action Levels	This section is not consistent with D.1.h and the discussion of the finding in the Supplemental Fact Sheet. The fact sheet states "Compliance with MAL levels is considered at least compliant with the Maximum Extent Practicable (MEP) regulation for storm water" and explains why "MALs have been determined to be the appropriate regulatory measurement of achieving the [MEP]."	Permit section D.3 should be revised to state "compliance with MAL levels is considered compliant with MEP."
D.1-3	21-22	Municipal Action Levels	The finding states one reason why the permit is not an unfunded mandate is that the copermittees have "requested permit coverage... in lieu of numeric restrictions on their discharges." The technical fact sheet in the discussion of finding D.1.h confirms that MALs are a form of numeric limits.	Remove the requirement for MALs, a form of numeric limits.

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F.1 – Development Planning				
F.1.d(6)(i)	35	Pest control	An NPDES permit should address pollution of surface waters, and clarify what level of effort is considered MEP. Pest control is handled by other regulations.	Remove
F.1.d(8)(e)	36	LID substitution for road projects	It is very challenging to incorporate LID when widening public roads. Allowance for building BMPs in roadways outside of the project footprint would allow for more successful implementation of LID in context of the watershed.	Provide more latitude for applying the LID substitution program to roads, highways and freeways, with measures to ensure that the substitution attains equivalent water quality benefit.
F.1.h(6)(a)(i)	43	Interim hydromodification requirements	Requiring all PDPs to achieve less than 5% EIA may be infeasible, particularly if the definition of a PDP includes redevelopment of an existing roadway. Also, requirements for a mandatory maximum EIA tend to be counter to smart growth goals which are a better approach when viewed at the watershed level.	Either remove the requirement since LID requirements already exist in the permit, or provide more allowance for determining feasibility and allow exceptions for projects that are consistent with a smart growth master plan.
F.1.h(6)(a)(ii)	43	Interim hydromodification requirements	Allowance for in-stream controls is appropriate but need to provide more clarification on what is meant by "geomorphically referenced channel design techniques."	Provide additional clarity.
F.1.h(6)(a)(iii)	43	Interim hydromodification requirements	Requiring curve hydrograph matching <u>and</u> less than 5% EIA <u>and</u> LID, seems redundant. If a project applicant significantly demonstrates hydrograph matching and includes LID where e appropriate according to the site specific feasibility study, then that should be sufficient. For small projects it may be more effective to allow the applicant to incorporate a specified level of LID instead of hydrograph matching or a maximum EIA. Requiring continuous simulation modeling would be very unreasonable for small projects; therefore the nomograph or other simpler methods should be offered as an option.	Consider revising interim hydromodification requirements based on this rationale.
F.2 – Construction				

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	76	3. Work Plan	"Goal of the work plan to is to..."	Typo
F.3.a – Existing Development: Municipal Activities				
F.3.a.(4)	53	BMP Implementation for Flood Control Structures	Establishes deadline for flood control retrofit evaluation.	This requirement would require a substantial effort on behalf of Copermitees due to the high number of these types of structures. Therefore, the City suggests a phased or tiered evaluation approach be considered.
F.3.a.(5)	53	BMP Implementation for Sweeping of Municipal Areas	Allows for Copermitees to "optimize" their municipal sweeping programs based on several factors (land type, season, trash pick-up schedules, etc.) as opposed to our Permit that requires mandatory sweeping frequencies dependant on trash volumes.	The City views this approach as more efficient means of conducting its jurisdictional street sweeping programs as it affords Copermitees greater flexibility in making decisions and the ability to tailor fit solutions based on the often unique challenged faced by Copermitees. The City further encourages the Regional Board to apply this adaptive approach to other municipal programs as the City feels it would result in both more efficient programs and enhanced compliance.
F.3.a.(7)	54	Infiltration from Sanitary Sewer to MSF/Provide Preventive Maintenance of Both	Sections (a) and (b) are redundant.	The City recommends deletion of section (b) as the implementation of the provisions in section (a) would maximize pollutant reductions by providing greater flexibility to Copermitees to manage their programs.
F.3.b – Existing Development: Industrial/Commercial				
(1)(iii)	58	Inspection of Industrial and Commercial Sites: Source Identification	Permit adds new subheading text "Added "ESAs and 303(d) Listed Waterbodies"	Recommend support of this provision since it's already in our permit, but the Orange County Permit just places more attention to these two waterbodies.
2(c)	58	General BMP Implementation	Deleted "as necessary to comply with this Order."	Recommend that this text be included in this provision in order to provide flexibility. Our permit has this text in the same provision.
1.a.i.Z	58	Source Identification	Other sites and sources with a history of unauthorized discharges	This will add an unknown number to the inventory

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2(d)	59	General BMP Implementation	Permit requires besides implementing BMPs design and implementation, that additional measures be based on inspections, incident responses, and water quality data	This is a new language provision, which is not in our permit. Recommend support of this provision because it provides guidance on how to design "additional measures."
(3)	59	BMP Implementation for Mobile Businesses	Permit transfers this provision to the BMP subsection. Provision requires that a program be developed and implemented to reduce pollutants from mobile businesses to the MEP.	This provision is in our permit, but as a standalone provision - "Regulation of Mobile Businesses." Draft Orange County Permit transfers this provision to the BMP subsection. Recommend support of this provision, since it's currently in our permit, and it appears the transfer is intended to place more attention on BMP implementation for this business type.
4(b)	60	Inspection of Industrial and Commercial Sites/Sources	Permit contains a new reporting requirement. The Copermitttee will be mandated to notify the Regional Board of any facilities with potential SW violations prior to the rainy season.	Recommend deletion of this provision; already provide this information in our JURMP annual report and periodic reports to the Regional Board.
4(b)	60	Inspection of Industrial and Commercial Sites/Sources	Annually notify the Regional Board, prior to the commencement of the wet season of all Industrial Sites with potential violations of the General Industrial Permits	Recommend deletion of this provision. This is an extra reporting requirement. We already report this to the Regional Board in our Annual report as well as throughout the year as inspections occur.
(4)(c)	60	Inspection of Industrial and Commercial Sites/Sources	At a minimum 20 percent of sites inventoried are to be inspected (excluding mobile sources and food facilities) must be inspected each year.	Recommend deletion of this provision. This lowers the percentage of inspections but does not give credit for inspecting food facilities to meet the 20% inspections. Food facilities must still be inventoried and included in the overall number that is used to calculate the 20%. This would result in us inspecting approx. 50% of our inventory every year (~10,000/year).

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(4)(d)	60	Inspection of Industrial and Commercial Sites/Sources	Each food facility must be inspected annually	This dramatically increases the number of inspections required.
4(d)	61	Inspection of Industrial and Commercial Sites/Sources: Frequencies	Permit requires each food facility to be inspected annually.	<p>This is a new inspection requirement, and will result in a dramatic increase to inspection inventory because provision requires inspection of each food facility annually.</p> <p>Recommend deletion of this provision. Although the data is not in, the WURMP inspections program is attempting to identify certain food facilities (outdoor eateries vs. indoor eateries) which may be more prone to pollutant generation. It will not be efficient to inspect food facilities that are NOT prone to storm water contamination which this provision proposes to do by requiring inspection of each food facility.</p>
(4)(e).d	60	Inspection of Industrial and Commercial Sites/Sources: Third-Party Inspections	<p>Permit adds this new provision</p> <p>"To the extent that third part inspections are conducted to fulfill requirements of this Order, the Copermittee will be responsible conducting and documenting quality assurance and quality control of 3rd party inspections."</p>	<p>This provision provides flexibility for the Copermittee to decide how to evaluate and conduct quality assurance of third party inspections. Our permit contains these requirements: certification program, inspection form templates, etc, which the Orange County permit does not contain.</p> <p>Recommend support of this provision due to flexibility</p>
D.3.c – Existing Development: Residential				
F.4 – Illicit Discharge Detection and Elimination				
F.5 – Public Participation				
F.3.d – Retrofitting Existing Development				

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(3)	66	Retrofit projects	The first statement says Copermitee must "require" retrofits, but subsequent sentence says "shall encourage". It is not clear to what degree these retrofits are voluntary or mandatory, or how many retrofits would be sufficient to satisfy the permit conditions. Retrofits are only feasible where there is a willingness of property owners to participate. Additionally, there will be a huge fiscal burden to implement this requirement and we think focusing the limited resource on implementing LID's in new development projects is a lot more efficient.	Recommend deletion of this requirement
(5)	66	Retrofit projects - inspection	Depending on the size of the retrofit program, it may be challenging for municipalities to accommodate the costs of monitoring the ongoing maintenance.	Suggest further evaluation of the fiscal effects.
G. – Watershed Runoff Management Plan				
G.1.c & d	72-73	Annual Watershed Water Quality Assessment & Watershed Strategy	Permit states that there must be an annual assessment of receiving water quality and use the information to effectively update BMP information and select management practices in response to the annual evaluation which is based on the annual assessment. Improvements to the receiving waters most likely cannot be observed after only a single year of implementing a specific BMP or specific suite of BMPs. Additionally, for a number of BMPs, implementation spans more than one year between concept and construction.	Revise the two sections to allow for longer term assessment of the receiving waters for the purpose of setting priorities and updating BMPs strategies for each watershed.

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G.1.e	74	BMP Implementation and Assessment	<p>The draft Permit states that Copermitees must implement and assess activities that improve the high priority water quality problems. While the City agrees with the intent of this requirement, it is important to note that a program that is structured in a way that mandates implementation of only activities guaranteed to be successful will serve as a major impediment to innovative approaches and ultimately improvements in program efficiencies that can lead to superior protection and improvement of water quality. This is seemingly in conflict with the intent of the increasingly complex effectiveness assessment in Section J, which would mandate additional layers of assessment as a way of forcing program improvements.</p> <p>Incorporating greater incentives, rather than additional restrictions to watershed activity implementation and additional components to effectiveness assessment, if structured in a way that encourages innovation and mandates improvements (rather than only mandating guaranteed outcomes).</p>	<p>The WRMP section of the Permit should be restructured to facilitate adaptive management where innovation is encouraged and attainment of greater efficiencies through program improvements is required. For example, Section F.3.a.5 requires the implementation of a municipal street sweeping program that optimizes pickup of trash and debris.</p>
G.3	76	Work Plan	<p>The Work Plan appears to require the same information that the Watershed RMP Annual Report requires.</p>	<p>Remove the requirement of the Work Plan entirely or require the Work Plan to be a section within the Watershed RMP Annual Report to make reporting more efficient.</p>
G.1.c.		Identify Sources of Pollutants	<p>This requirement conflicts with the Regional Board TMDL program. Additionally, there appear to be no economic considerations and time schedule included in this permit condition.</p>	<p>Remove this requirement due to its duplication with the Regional Board's existing TMDL program. Additionally, these programs are very costly to implement all watersheds, every year and don't consider using information from one watershed across to another watershed. If this condition reminds it needs to be included in the economic analysis.</p>

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H. – Fiscal Analysis				
I. – Total Maximum Daily Loads				
I	79	TMDL	No need for other enforcement actions inside of a permit.	The City questions the need for any additional enforcement mechanisms within a permit which can apply numeric limits. Recommend removal of other enforcement mechanisms from permit.
J. – Program Effectiveness Assessment				

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J.1.a. (1) and (2)	79-80	Objective of Effectiveness Assessments – 303(d) waterbodies & environmentally sensitive areas	Per the definition in Attachment C, environmentally sensitive areas include 303(d) listed waterbodies. It is therefore redundant and inefficient to require assessment for both 303(d) waterbodies and for environmentally sensitive areas.	Remove either Section J.1.a.(1) or J.1.a.(2).
J3.a. (1) and (2)	81-82	Effectiveness Assessment and Program Response Reporting	Per the definition in Attachment C, environmentally sensitive areas include 303(d) listed waterbodies. It is therefore redundant and inefficient to require reporting on assessment for both 303(d) waterbodies and for environmentally sensitive areas.	Remove either Section J3.a.(1) or J.3.a.(2).
J.1.a.(1)	79-80	Objectives of Effectiveness Assessments	Requires Copermittees to establish annual assessment measures for reducing discharges of pollutants into 303(d)s and ESAs for all six outcome levels, and then annually conduct each measure to evaluate its outcome to determine effectiveness. Because Copermittees generally implement both larger jurisdictional programs and even smaller targeted water shed activities at scales larger than individual drainage areas of water bodies, the new 303(d) and ESA components to the effectiveness assessment program would result in a cumbersome assessment effort that would result in repetitious reporting of assessment information for individual water bodies.	It is understood that the fundamental purpose of the assessment program is to facilitate improvement of Copermittee efforts. Rather that require additional detailed layers of assessment that will likely yield proportionately little new information, the Permit should be restructured to facilitate adaptive management where innovation is encouraged and attainment of greater efficiencies through program improvements is required. For example, see comment regarding Section G.1.e.
K. – Reporting				
K.3.a.(3)	85	JURMP Reports	Copermittees must include Reporting Checklist in each Annual Report (see attachment D for details).	

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L. Modification of Programs				
M. Principal Copermittee Responsibilities				
N. – Receiving Waters Monitoring and Reporting Program				
5 b	12	Coastal SD Monitoring	Unclear where the samples are to be collected if the flow is diverted away from the outfall.	State where the samples should be collected. (Before the diversion?)
5 b	12	Coastal SD Monitoring	Unclear of the purpose of storm event sampling. Are there action levels or are the results strictly for comparison?	State what if any follow-up actions are required for storm event sampling.
5 c 1	13	Coastal SD Monitoring	Weekly sampling was determined to be unnecessary and would be excessive with over 100 monitoring stations.	Change the sampling frequency to monthly (as it is currently).
5 c 2	13	Coastal SD Monitoring	Unclear how special investigation stations are selected.	State selection criteria or considerations for special investigation stations.

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O. – Standard Provisions, Reporting Requirements, and Notifications				
Attachments (A Through E)				

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