



RIVERSIDE COUNTY FLOOD CONTROL  
AND WATER CONSERVATION DISTRICT

June 19, 2009

Mr. Ben Neill  
San Diego Regional Water Quality Control Board  
9174 Sky Park Court, Suite 100  
San Diego, California 92123-4353

Dear Mr. Neill:

Re: Comment Letter – Revised Tentative  
Order R9-2009-0002, NPDES No.  
CAS0108740, Orange County Municipal  
Separate Storm Sewer System Permit  
Reissuance *NWU:658018:bneill*

The Riverside County Flood Control and Water Conservation District (District) appreciates the opportunity to submit additional comments on the above listed Revised Tentative Order (Draft Permit) issued to the South Orange County MS4 Permittees. The District serves as Principal Permittee for the MS4 Permit issued by the San Diego Regional Board that covers the portion of Riverside County that is within the Santa Margarita Watershed (Board Order R9-2004-0001). The County of Riverside and the incorporated Cities of Murrieta and Temecula are existing Co-Permittees. The newly incorporated Cities of Menifee and Wildomar are Co-Permittees pending the renewal of Board Order R9-2004-0001. Collectively, the District, the County of Riverside and the above listed cities are hereinafter referred to as the Riverside County Permittees.

Regional Board staff has indicated that they intend to use the Draft Permit as a model for the renewal of Board Order R9-2004-0001 for the Santa Margarita Region of Riverside County. For the reasons discussed in this letter, the Riverside County Permittees submit that the requirements in this Draft Permit are only applicable to Orange County. The Riverside County Permittees have not participated in this process as a Permittee or stakeholder, but only as an interested party. As such, the comments that the Riverside County Permittees have previously provided on the Draft Permit are limited to broad policy issues that appear to be in conflict with applicable laws, are unsupported by science or constitute poor public policy. The comments contained in this letter are provided to supplement those previously submitted on May 15, 2009.

The specific issues further addressed in this letter are:

1. The inappropriate intent to utilize this Draft Permit as a model for Riverside County;
2. Numeric effluent limits and the expectation that the pollutant source is always identifiable;
3. LID requirements to quantify pollutant loads and reductions; and
4. Repetitive and self-defeating hydromodification requirements.

**1. THE DRAFT PERMIT BEING CONSIDERED FOR SOUTH ORANGE COUNTY IS NOT APPROPRIATE FOR RIVERSIDE COUNTY**

At the public workshop on April 3, 2009, Regional Board staff announced their intent to utilize the final Orange County MS4 Permit as the model for the Riverside County Permit. In order for MS4 Permit requirements to be effective at accomplishing the goal of achieving and protecting beneficial uses, the permit development must have adequately involved and incorporated comments from the stakeholders, and the permit must be written to require programs that are appropriate for the specific permit area. Using the Orange County Permit as a model or starting point for Riverside County's Permit negotiations is inappropriate from both a policy and technical perspective, and will result in ineffective and inefficient programs.

**1.1 Policy issues with the inappropriate use of the Draft Permit as a model for Riverside County**

Negotiations on the Draft Permit have been ongoing between the Regional Board and the Orange County Permittees since 2007. To date, the Riverside County Permittees and other Riverside County stakeholders have not been provided the opportunity to participate in the process in an equivalent manner as the Orange County Permittees and stakeholders. Nevertheless, the use of this Draft Permit as the model for the Riverside County Permit can create the false presumption that the requirements and programs contained therein have been thoroughly reviewed and commented upon by the Riverside County Permittees and Riverside County stakeholders, which is not the case. As the permit that results from this process will be specific to Orange County, the Riverside County Permittees have appropriately played a passive and mostly observational role in the development of this Permit. Although the Riverside County Permittees have provided comments on the Draft Permit, the extent and intent of their comments has been limited to addressing broad policy issues that the Riverside County Permittees are concerned are inappropriate and may set precedent for the renewed Riverside County Permit. There has been no effort on the part of the Riverside County Permittees to fully review or comment on the details of this Permit and, furthermore, the Riverside County Permittees have not been involved nor invited to the "Permittee" meetings in which the details of this Draft Permit have been discussed. Therefore, the Riverside County Permittees expect to be afforded, at minimum, an equivalent process for involvement in their permit renewal as has been provided to the Orange County Permittees and stakeholders for this Draft Permit.

**1.2 Technical Issues with the Inappropriate Use of the Draft Permit as a Model for Riverside County**

- a) **Permits should build upon compliance programs that are already in place, especially where those programs have already been shown to be effective.**

Through previous permits, the Riverside County Permittees have developed watershed specific programs that are structured differently than those in Orange

County. These programs have been in development and subsequent refinement for several years, and these programs have been molded into effective and efficient programs for the Upper Santa Margarita Watershed. As discussed in the 4<sup>th</sup> year annual report, these programs have been shown to be effective and are protective of receiving water quality, especially in light of the 300% growth and urbanization that has occurred within the Permit area. Forcing permit requirements upon the Riverside County Permittees that are structured based upon Orange County's existing permit and which have been negotiated between Regional Board staff and Orange County stakeholders could result in an unjustified overhaul and unnecessary re-invention of Riverside County's programs that will undermine the credibility of the Permittees' program, and will negatively affect their ability to protect water quality.

The cookie cutter approach to permitting could negate progress the Permittees have made to date on developing Low Impact Development (LID) tools (including the District's LID BMP Testing and Demonstration Facility and pending LID Design Manual), hydromodification management tools (being developed in conjunction with the Southern California Coastal Watershed Research Program), Permittee efforts to develop and promote proper management of Pyrethroid Pesticides (including several presentations and meeting with leading scientists and Department of Pesticide Regulation managers) and other projects that we have undertaken for the last five years to manage water quality issues specific to the Santa Margarita Region of Riverside County. MS4 Permits should be written to take advantage of programs that Permittees are proactively undertaking and reflect the priorities that the Riverside County Permittees have identified for their watershed. By imposing permit requirements that obviate these existing efforts, the Regional Board is de-incentivizing MS4 Permittees from being proactive.

**b) Permits should reflect and accommodate the recommendations set forth by the Permittees in the Report of Waste Discharge (ROWD).**

For over 18 years, the Riverside County Permittees have been actively involved in statewide efforts to further develop and support the stormwater community and develop, review, test and implement appropriate Best Management Practice (BMP) technologies and programs. As part of the ROWD the Permittees thoroughly reviewed their existing compliance programs and committed to well thought-out programmatic revisions that will ensure that they continue to protect receiving water quality to the Maximum Extent Practicable (MEP) and implement measurable goals. Many of the recommended programs are actually proactive in that they provide similar end results as programs that are now being discussed for the draft South Orange County Permit.

**c) Although the recommended revisions result in an additional burden upon already stretched municipal budgets, the recommended programs have been formulated**

Mr. Ben Neill  
San Diego Regional Water Quality Control Board  
Re: Comment Letter – Revised Tentative Order  
R9-2009-0002, NPDES No. CAS0108740,  
Orange County Municipal Separate Storm  
Sewer System Permit Reissuance  
NWU:658018:neill

June 19, 2009

in a manner that ensure that their programs meet the MEP standard while remaining cost effective, transparent and integrate smoothly into the Riverside County Permittees' existing programs. It is important to recognize that the recommended programs described in the Riverside County Permittees' ROWD present an approach that will be more appropriate and effective within Riverside County and warrant serious consideration.

**d) Permits should focus resources on the actual water quality issues within each watershed.**

Inappropriately imposing requirements from other permit areas curtails the Permittees ability to develop and implement programs that address their specific water quality issues in a manner that is efficient and effective. Further, attempting to comply with requirements that are developed for areas with different climatic, land use and hydrologic conditions may actually decrease the effectiveness of the Permittees' overall program by diverting funding away from where it can provide the greatest benefit to water quality. The physical and socio-economic characteristics of the Santa Margarita Region of Riverside County are substantively different from Orange County and, as such, the water quality issues, and the most effective solutions to address those issues, may be vastly different than what is appropriate and effective in Orange County. Using Orange County's requirements as a model for the Riverside County Permit falsely presumes that Orange County's programs will be equally effective and efficient at addressing the water quality issues in Riverside County. On the contrary, such programs may actually be less effective than simply building upon the Riverside County Permittees' existing and already proven programs.

**e) Permit requirements should be reflective of the resources available within the permit area.**

MS4 Permit requirements are written to establish a framework by which MS4 Permittees can be measured for compliance with the MEP standard. The MEP is not and cannot be the same for all permit areas, as what is "practicable" is affected by many factors, including socio-economic factors, which are quite different between the Orange County and Riverside County Permit areas. South Orange County is a built-out, highly urbanized coastal community whereas the Santa Margarita Region of Riverside County is still essentially an urbanizing rural region in a semi-arid climate with less than 300,000 residents. These differences affect the ability of the Riverside County Permittees to secure the resources to comply with expanded permit requirements and define what is "practicable" for Riverside County. Therefore the scale, focus, and implementation of compliance programs will be necessarily different and should reflect the unique characteristics of the watershed and the communities located within it. The following information provides a limited example of some of the stark differences between the two Permit areas.

Permit Area Comparison	South Orange County	Riverside County
Area	200 sq mi <sup>1</sup>	548 sq mi <sup>2</sup>
Population	550,000 <sup>1</sup>	260,000 <sup>2</sup>
Overall Population Density	2750 / sq mi	475 / sq mi
Median Per Capita Income <sup>3</sup>	\$44,453	\$24,167
Median Home Value <sup>4</sup>	\$380,000	\$180,000

Additionally, the sobering economic forecasts described in the 2009 ROWD<sup>5</sup> have continued to not only be realized but actually exceeded in its negative impacts as Riverside County is one of the hardest hit areas in the country with a 13% unemployment rate and the 4<sup>th</sup> highest number of foreclosures in the nation. Further, City Councils and the County Board of Supervisors do not have the luxury to impose assessments nor allocate funds and resources irrespective of the general needs and will of the public. These factors further diminish the likelihood that additional assessments for enhanced compliance requirements would be voter approved in the current economic climate.

Imposing the negotiated Orange County Permit requirements upon Riverside County would create an insurmountable burden that would likely result in unavoidable noncompliance due to their inability to secure the significant resources that would be required to not only reinvent their existing programs as described above, but to incorporate additional programmatic and reporting programs that are often excessive and do not in any way benefit water quality.

<sup>1</sup> Information provided by Orange County

<sup>2</sup> As reported in the Riverside Permittees' Watershed Annual Report

<sup>3</sup> California County Profiles, California Department of Finance, 2007

<sup>4</sup> "Southland median home price falls to \$247,000 in April", Los Angeles Times, May 19, 2009 (<http://www.latimes.com/business/la-fi-homes20-2009may20.0.4474695.story>)

<sup>5</sup> Section 3.4 of the 2009 ROWD

## **2. NUMERIC EFFLUENT LIMITS – NEED FOR A FINDING OF "UNDETERMINED"**

Tentative updates to the Draft Permit released on May 5<sup>th</sup> describe the actions that must be taken in the event that monitoring data determines that a Numeric Effluent Limit (NEL) has been exceeded. Notwithstanding the comments provided in our previous comment letter submitted on May 15, 2009, the process that is required when an NEL is exceeded requires that the Permittees make one of three specific findings in response to the exceedance; 1) the discharge is demonstrably natural in origin, 2) the discharge results from an illicit connection and the discharge that can be identified and eliminated, or 3) the discharge is determined to be a discharge that is conditionally exempt. The problem is that these options are based on the faulty assumption that a single and specific source of an exceedance can always be identified.

In at least some cases, transitory Illegal Connection/Illicit Discharge (IC/ID) events involving dissolved pollutants only detectable via lab analysis may trigger NEL provisions. However, lab results can take multiple days to process; by the time the Permittee becomes aware of the exceedance, the discharge may have ceased. In such a case, the Permittee would have not been able to make any of the allowable findings. Further, the area served by MS4s is not entirely under the control of the Permittees (compared to an industrial operator who is actually in direct control of his business) and MS4 discharges can originate from multiple diffuse sources. Detecting the source of an exceedance in such cases is complicated by many factors, including:

- a) The time it takes pollutants to migrate downstream within the MS4. By the time the exceedance is detected and a source investigation is initiated the discharge may no longer be occurring.
- b) The combination of many diffuse sources which would be difficult or impossible to individually pinpoint and quantify.
- c) The source could be natural such as arsenic, iron or selenium in rising groundwater, but making a demonstrable conclusion is not feasible given limited data sets.
- d) The exceedance may be for a constituent that can be attributed to many different types of sources and factors, (e.g., pH and TSS). As such, finding the true source can be likened to finding a needle in a haystack.

The required responses to exceedances of an NEL need to be realistic and recognized that it may not always be possible to determine with absolute certainty the source of the exceedance. Accordingly MS4 Permits should not hold Permittees responsible for inability to determine the source of an exceedance.

## **3. INCLUSION OF REQUIREMENTS TO QUANTIFY POLLUTANT LOADS AND REDUCTIONS**

Several provisions of the Draft Permit require the calculation of Pollutant Loads generated by sites and to determine the pollutant load reductions that occur through the implementation of BMPs. There is not a sufficient and defensible body of knowledge within the stormwater community to support and justify inclusion of such requirements. These requirements need to be



Mr. Ben Neill  
San Diego Regional Water Quality Control Board  
Re: Comment Letter – Revised Tentative Order  
R9-2009-0002, NPDES No. CAS0108740,  
Orange County Municipal Separate Storm  
Sewer System Permit Reissuance  
NWU:658018:neill

- 7 -

June 19, 2009

removed or restructured to include requirements that can be complied with utilizing the available and applicable body of knowledge.

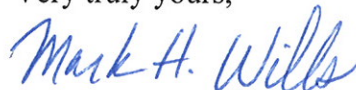
4. **INCLUSION MULTIPLE DIFFERENT AND POTENTIALLY INCOMPATIBLE HYDROMODIFICATION REQUIREMENTS**

The Draft Permit requires implementation of three distinct hydromodification programs, all to be implemented potentially within the first three years of the Permit cycle. Each program is based on different sets of requirements and will likely result in three distinct programs where each program will only be implemented for approximately one year before the Permit will require the next program to be implemented. From an administrative point of view these requirements would have unreasonable impacts on the municipal staff, the development community and even the Regional Board staff. The repeated requirements to develop and re-develop programs are not reasonable and will only serve to create confusion and waste scarce resources. It is not practicable, nor is it good public policy to develop a program, train municipal staff and the development community on the program, and then implement the program all while developing a completely different successor program that will be implemented a year later. Alternatively and in light of the virtual cessation of development activity in the region, it would make more sense to require continuation of existing new development controls with possible minor enhancements until the completion of the Southern California Coastal Watershed Research Project (SCCWRP) hydromodification study, which all of Southern California has already committed to implement upon its completion.

***CLOSING***

In closing, we would like to thank you for the continued opportunity to comment on the Draft Permit and appreciate your consideration regarding the important concerns described herein. The Riverside County Permittees reiterate their request made in the ROWD submitted in January 2009 that the next Riverside County MS4 Permit be structured and based on our existing Permit and that any expansion of compliance requirements be limited and support our efforts to improve the effectiveness of existing compliance programs in addressing specific water quality impairments. We appreciate your consideration of our comments and look forward to meeting with Regional Board staff in the development of a MS4 Permit specific to Riverside County. If you have any questions regarding these comments, please contact Jason Uhley at 951.955.1273.

Very truly yours,



MARK H. WILLS

Chief of Regulatory Division

c: Riverside County Management Steering Committee  
David Huff, Deputy County Counsel

CP:cw