



December 14, 2016

VIA ELECTRONIC MAIL ONLY

Ms. Christina Arias
San Diego Regional Water Quality Control Board
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San Diego, CA 92108
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Subject: Comment – Tentative Order No. R9-2016-0205

The City of Dana Point (City) appreciates the opportunity to comment on the Tentative Investigative Order No. R9-2016-0205, an order directing the owners and operators of Phase I MS4s Draining the Watersheds within the San Diego Region to Submit Technical and Monitoring Reports Pertaining to the Control of Trash in the Discharges from Phase I MS4s to Ocean Waters, inland Surface Waters, Enclosed Bays and Estuaries in the San Diego Region (TIO).

The City also appreciated staff's effort to hold the public workshop on December 8, 2016 and looks forward to some needed clarification and resolution to some of the items that were discussed at the workshop. The City provides the following comments:

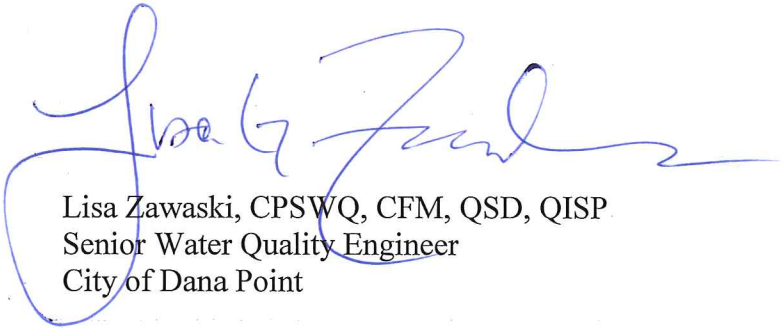
1. It is understood that the State Water Resources Control Board (SWRCB) is finalizing the list of "certified" BMPs, including Low Impact Development (LID) type BMPs, and guidance documents on topics such as demonstration of full capture equivalency and proposing equivalent alternative land uses, etc. It is imperative that the MS4 permittees have these final documents available to them prior to issuance of this Investigative Order so the MS4 permittees have all the information available in order to conduct a comprehensive evaluation and make well-informed decisions regarding the selection of Track 1 or Track 2.¹

¹ As the Regional Board is likely aware, the City has already undertaken significant efforts, per the requirements of the Regional Permit, and the prior S. Orange County MS4 Permit(s), to install, operate, and maintain Best Management Practice (BMP) systems for storm drains, including inlet filters, trash separation units and diversions that capture dry weather flows within the City's MS4. However, to the extent that the TIO can be read to require the City to go above and beyond the BMPs that the City already has in place, the City is concerned that such requirements would appear to constitute an unfunded state mandate for which the City has no fee authority. The City would benefit from understanding how the Regional Board intends for the City to pay for the "full capture systems" or equivalent level of stormwater treatment that the TIO appears to envision.

2. It is unclear why Caltrans and Phase II permittees are not being issued a consistent Investigative Order at the same time. Without clear and consistent requirements, applicable to all regulated parties at the same time, effective cooperation and coordination is challenging.
3. The TIO inappropriately addresses transient encampments as a point source of trash. The State and other Regional Boards consider transient encampments a non-point source of trash. An alternative program or mechanism is needed to address this issue, recognizing limits of land use authority and significant constitutional and statutory restraints.
4. Although the TIO provides for electronic submittal of documents, it specifies a CD-ROM or CD, however many new computers do not have optical drives. Can email or file sharing options (such as hightail or dropbox) also be provided?

Thank you for your consideration of these comments. If you have any questions, please contact me at (949) 248-3584 or lzawaski@danapoint.org.

Respectfully,



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City of Dana Point

Cc; Mark Denny, Matt Sinacori, Dana Point