



Ventura Countywide Stormwater Quality Management Program

Participating Agencies

June 4, 2010

Camarillo

County of Ventura

Fillmore

Moorpark

Ojai

Oxnard

Port Hueneme

San Buenaventura

Santa Paula

Simi Valley

Thousand Oaks

Ventura County
Watershed Protection
District

Mr. Sam Unger
Interim Executive Officer
Los Angeles Regional Water Quality Control Board
320 4th Street, Suite 200
Los Angeles, CA 90013

SUBJECT: COMMENTS ON RECONSIDERATION OF THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT (TENTATIVE ORDER/NPDES No. CAS004002) FOR THE VENTURA COUNTY WATERSHED PROTECTION DISTRICT, THE COUNTY OF VENTURA AND INCORPORATED CITIES THEREIN (MUNICIPAL SEPARATE STORM SEWER SYSTEM)

Dear Mr. Unger:

The Ventura Countywide Stormwater Program ("Ventura Program") would like to take this opportunity to provide comments on the Los Angeles Regional Water Quality Control Board's ("Regional Water Board") Tentative Order/NPDES Permit No. CAS004002 of Waste Discharge Requirements for Storm Water Discharges from the Municipal Separate Storm Sewer System ("MS4") within the Ventura County Watershed Protection District, County of Ventura, and the Incorporated Cities therein (collectively referred to as the "Permittees"), which was released for public comment by the Regional Water Board on May 5, 2010.

We wish to first express our appreciation of the Regional Water Board's staff efforts over the past year to meet and consider our interpretations with the currently effective permit, Order No. 09-0057. These efforts have aided in obtaining mutual understandings of the Permit requirements that are protective of water quality and build upon an award winning stormwater management program. The Permit, as you know, is comprehensive and addresses many relevant water quality issues within our watersheds.

Since the May 7, 2009 adoption of the Order the Permittees have committed significant resources towards permit compliance and have accomplished many tasks. Most significantly was the submittal of the Revised Technical Guidance Manual for New and Re-Developments. This manual was updated to help the development community understand and interpret the complex land development permit requirements. Other program elements submitted to the Regional Water Board were a Youth Outreach Plan to communicate the stormwater message to school-aged children, this plan was also implemented last year. The Permittees also provided a prioritization of catch basins by levels of trash received through maps or tables with GIS coordinates.



Improvements have been made in every aspect of the program. A special training session was held for Permittee construction inspectors and capital improvement project managers on the new requirements for construction sites. New inspection forms were developed for both construction sites and business inspections along with focused educational materials. Also new this year is a Retail Partnership Program to communicate specific BMPs through pet stores, automotive supply stores and home improvement/nurseries.

Most costly to the Program has been the increase in monitoring. The largest part of that were the design, construction and installation of the eleven new monitoring sites. Four new flow weighted composite monitoring stations were installed to capture the first flush rain event of this permit year, and seven more new stations are very close to completion. The increase in required flow weighted composites samples required a large investment in automation and communication equipment to make sample collection possible with current staffing levels. However, increased staff time was needed to complete the first year of the Regional Bioassessment Study; sampling for the second year begins this June. Also starting this June is the new requirement for dry weather grab samples from each Permittees' storm drain system. Finally, a Quality Assurance Project Plan required for the new sediment pyrethroid monitoring has been drafted

Before setting forth our comments on the Tentative Order, which is in fact our current Permit, we would like to highlight a couple of significant observations. First, the Tentative Order remains, in every sense of the word, a ground breaking permit. From the development requirements, to establishing performance standards for treatment control best management practices (BMPs), to specifying specific BMP requirements for businesses, industries, and construction sites; the Tentative Order sets a high bar for California's municipal stormwater programs. Because of the ground-breaking nature of this Tentative Order, the Permittees have had to substantially revise the existing Stormwater Management Program in Ventura County. As a result, costs associated with implementation of the Stormwater Management Program have increased substantially. Please be assured, the Permittees have all revised their programs to ensure compliance with the Permit. However the uncertainty caused by the Building Industry Association petition of the Permit to the State Water Resources Control Board, the release of subsequent versions of the Permit, and the voluntary remand of certain provisions within the Permit have created practical difficulties in being able to fully commit sufficient resources to implementation of the programs. Because of this uncertainty, we appreciate the fact that the due dates in the Tentative Order allow us the opportunity to address many of these program requirements with a renewed commitment and energy.

Furthermore, the Tentative Order as proposed will protect existing high quality water and will lead to real water quality improvements. The Permittees take pride in the fact that we have some of the cleanest waterbodies and beaches in Southern California. This Tentative Order will continue to build on our existing efforts to protect these waters.

However, as discussed further below, the Permittees would be remiss to not take this opportunity to comment or acknowledge a few outstanding issues with the Tentative Order.

Our specific comments are organized around some of the overriding approaches acknowledged in this Tentative Order.¹ They include:

¹ Although the Tentative Order addresses many of the concerns expressed in previous comments submitted by the Permittees, the Permittees still maintain a number of general concerns with the

- I. Reporting Program
- II. Total Maximum Daily Loads (TMDLs)
- III. Monitoring Program

While the Permittees recognize that some of the comments submitted below may be outside of the Regional Board's notice for this hearing, the comments are intended to make the Tentative Order, Monitoring Program, TMDL and Annual Reporting requirements correct with previous Board action, better and more efficient, and are not necessarily substantive changes to the Tentative Order.

I. Reporting Program

Over the past year the Permittees and Regional Water Board staff worked together to develop a reporting program to address inconsistencies with Permit and Attachment H under Order No. 09-57 (now Attachment I of the Tentative Order). A working group was formed and a consultant hired to develop an example reporting format for the Industrial/Commercial Facilities Program. During a December 2009 meeting with Regional Water Board staff this format was determined acceptable and we were requested to continue. Work proceeded on the other Annual Report program elements and these were also submitted to the Regional Water Board staff.

Having gone through this effort we find reverting to the format of Attachment I a frustrating and costly endeavor. Outlined below are some examples of why we have difficulties with Attachment I, and why we wish to continue with an alternative reporting format. The Permittees look forward to building on the work already accomplished and the opportunity make the reporting format as practicable as possible

The Tentative Order addresses the Annual Report requirements in three provisions. These are listed below:

- Part 4, Provision I. This provision essentially requires the Permittees to (1) develop in consultation with the Regional Water Board an electronic reporting program, (2) submit the Annual Report by December 15th of each year, and (3) document the status of the Municipal Storm Water Program, including an integrated summary of Part 1 – Monitoring Program and Part 2 – Program Report²
- Part 7, Provision T. This Standard Provision establishes requirements for the Annual Report consistent with 40 CFR 122.42(c). These requirements are as follows:
 - (1) The status of implementing the components of the storm water management Program that are established as permit conditions;
 - (2) Proposed changes to the storm water management programs that are

Tentative Order and its potential impact to Ventura County and its municipalities. To that extent, the Permittees hereby incorporate by reference all previous comments and attachments submitted on March 6, 2007, October 12, 2007, and May 28, 2008, April 10, 2009 in response to administrative draft versions of the Tentative Order; as well as comments and attachments submitted between May 2008 and May 7, 2009 on the previous Tentative Order.

² Although not specified in Part 4, Provision I, the referenced Parts 1 and 2 are identified in Attachment I.

established as permit condition. Such proposed changes shall be consistent

with 40 CFR 122.26(d)(2)(iii) of this part;

(3) Revisions, if necessary, to the assessment of controls and the fiscal analysis

reported in the permit application under 40 CFR 122.26(d)(2)(iv) and (d)(2)(v) of this part;

(4) A summary of data, including monitoring data that is accumulated throughout the reporting year;

(5) Annual expenditures and budget for year following each annual report;

(6) A summary describing the number and nature of enforcement actions, inspections, and public education programs; and

(7) Identification of water quality improvements or degradation.

- Attachment I – Reporting Program Requirements. This attachment has four parts: Part 1 Monitoring Report, Part 2 Program Report, Part 3 Storm Water Quality Management Program Implementation, and Part 4 Special Provisions. The attachment includes a comprehensive list of questions that support the Regional Water Boards' effort to assess whether the MS4s are complying with the Tentative Order. The attachment is intended to be consistent with the requirements of the Tentative Order.

The Permittees have fundamental concerns with the current Tentative Order and Attachment I. First, the format established by the Tentative Order/Attachment I provides little information for the Permittees to use to assess the effectiveness of our program and how we might want to modify the program to make it more effective. Instead, the Tentative Order/Attachment I includes multiple questions that serve only as a check list of permit provisions and does little to help our efforts to protect water quality. Second, our review of the reporting requirements shows that Attachment I is inconsistent, and many times, in conflict with the Tentative Order. As a case in point, we compared the requirements in Attachment I with the requirements in the permit and found that there are numerous inconsistencies/conflicts, especially in the Planning and Land Development and Development Construction Programs. Some of these conflicts are summarized below:

- Part 4, Provision B.2 and Attachment I, Part 4, Watershed Initiative Participation, Question 1. The Tentative Order requires more participation than identified in Attachment I.
- Part 4, Provision D.2 (4) and Attachment I, Part 4, Industrial/Commercial, Question 3 regarding inspection requirements for nurseries. Attachment I requests more information than required in the Tentative Order.
- Part 4, Provision E and Attachment I, Part 4, Planning and Land Development Program, all questions. The Planning and Land Development Program is intended to be an integrated program for new development redevelopment projects that provides for the planning, design and implementation of BMPs to protect water quality. Attachment I on the other hand is a series of questions that do not relate to the overall program and taken separately do not provide the necessary insights into how the Planning and Land Development Program is functioning. More specifically questions 1, 2, 6 and 7 relate to each other and should be addressed together and evaluated as an entire program not separate

tasks. It is also worth noting that in some cases (e.g., questions 10-12) do not track the organization of the Tentative Order.

As noted in Attachment A, there are a number of inconsistencies and unnecessary questions that do not provide the information that the Permittees need to assess the effectiveness of their overall program and to make modifications when necessary. Instead, the questions create an extensive reporting requirement that may or may not adequately address the Tentative Order provisions. Thus, the Permittees are in an unenviable position of not knowing whether they are potentially in violation of the Tentative Order although they completed the questions noted in Attachment I. While we have concerns with the current Tentative Order and Attachment I, we believe that our concerns with the reporting requirement can be addressed relatively easily by adding a statement in Attachment I that allows the Permittees to submit their own reporting format in lieu of Attachment I as long as the proposed format meets the following objectives:

- (1) Conveys the status of implementing the components of the storm water management program that are established as permit conditions;
- (2) Includes proposed changes to the storm water management programs that are established as permit conditions or that have been identified by the Permittees as necessary to provide for more efficient stormwater management programs;
- (4) Includes a summary and assessment of monitoring data collected throughout the reporting year as established as permit conditions;
- (5) Conveys necessary information regarding annual expenditures and budget for year following each annual report;
- (6) Includes a summary describing the number and nature of enforcement actions, inspections, and public education programs implemented; and
- (7) Identifies water quality improvements and/or degradation.

Further, we suggest that the alternative report format be approved by the Executive Officer. Once approved, the alternative format would be applied to subsequent annual reports, unless a different alternative format is proposed for Executive Officer approval.

II. TMDLs

Consistent with 40 C.F.R. § 122.44(d)(1)(vii)(B), the Tentative Order incorporates waste load allocations (WLAs) for effective TMDLs as permit limits. As required by 40 C.F.R. § 122.44(d)(1)(vii)(B), the permit limits in the Tentative Order have been modified from previous drafts of the permit to be "consistent with the assumptions and requirements of available WLAs" by being incorporated as receiving water limits in the permit. Additionally, the WLAs have appropriately been expressed in the form of BMPs consistent with EPA's 2002 Memorandum *Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs*. As stated in that memorandum:

- Water Quality-Based Effluent Limits (WQBELs) for NPDES-regulated storm water discharges that implement WLAs in TMDLs may be expressed in the form of best management practices (BMPs) under specified circumstances. (See 33 U.S.C. §1342(p)(3)(B)(iii); 40 C.F.R. §122.44(k)(2)&(3).) If BMPs alone adequately achieve the WLAs, then additional controls are not necessary.
- EPA expects that most WQBELs for NPDES-regulated municipal and small construction storm water discharges will be in the form of BMPs, and that numeric limits will be used

- only in rare instances.
- When a non-numeric WQBELs is imposed, the permit's administrative record, including the fact sheet when one is required, needs to support that the BMPs are expected to be sufficient to achieve the WLA in the TMDL. (See 40 C.F.R. §§ 124.8, 124.9 & 124.18.)
- The NPDES permit must also specify the monitoring necessary to determine compliance with effluent limitations (See 40 C.F.R. § 122.44(i)). Where effluent limits are specified as BMPs, the permit should also specify the monitoring necessary to assess if the expected load reductions attributed to BMP implementation are achieved (e.g., BMP performance data).
- The permit should also provide a mechanism (e.g. iterative, adaptive management BMP approach) to make adjustments to the required BMPs as necessary to ensure their adequate performance.

In accordance with U.S. EPA's Guidance, the BMPs included in the permit will be sufficient to implement and achieve the WLAs in the TMDLs. Further, the specified monitoring program is sufficient to determine compliance load reductions resulting from BMP implementation. This combined with the incorporation of the "iterative process" is consistent with U.S. EPA's Guidance.

While the Permittees believe that the language in the Tentative Order meets the requirements of 40 C.F.R. §122.44(d)(1)(vii)(B) and is consistent with EPA's Guidance, we recommend the following revision to provide further clarification that the WLAs will be achieved through BMPs and to provide a mechanism for making adjustments to the BMPs to ensure their adequate performance. Our suggested revisions to the findings and to Part 6 of the Tentative Order are as follows:

Finding F.3

~~The permit provisions and BMPs implementation of measures set forth in this Order are reasonably expected to reduce the discharge of pollutants conveyed in storm water discharges into receiving waters, and to achieve meet the TMDL WLAs for discharges from MS4s that have been adopted by the Regional Water Board.~~

Part 5 – Total Maximum Daily Load Provisions

Provision (b)(2) under each TMDL, to read as follows:

~~If any WLA is exceeded at a compliance monitoring site, permittees shall implement BMPs in accordance with the TMDL Technical Reports, Implementation Plans or as identified as a result of TMDL Special Studies identified in the Basin Plan Amendment. Following these actions, Regional Water Board staff will evaluate the need for further enforcement action. Exceedances of the WLAs at the receiving water compliance locations will initiate the implementation of additional BMPs identified in the permit and modification of the SMP to include additional BMPs to further reduce discharges of pollutants to achieve compliance with the WLAs.~~

With these modifications, the Tentative Order will clearly achieve the TMDL in accordance with EPA's 2002 memorandum.

In addition, at the May 7, 2009 hearing on Order No. 09-057, I (representing the Ventura County Permittees) included in my PowerPoint presentation, and provided in written copies to the Board, proposed edits to Part 5 – TMDL Provisions. These edits are not substantive changes but rather corrections to the Tentative Order in line with previous Regional Board adopted TMDL Basin Plan Amendments. We request the edits included here as Attachment B be incorporated into a Revised Tentative Order.

VIII. Monitoring Program

The Tentative Order reflects tremendous amount of work that has been done to resolve many past technical issues with the Monitoring Program, while ensuring the collection of useful water quality data for the Ventura County Permittees. In fact, this past wet weather season we utilized these stations, and the data collected added to our understanding of the Permittees' urban outfall discharges. The adoption of Order No. 09-057 last year, and the proposed Tentative Order include additional special studies, outfall monitoring and beach water quality monitoring doubling the cost of the monitoring program, all in addition to a significant amount of other monitoring occurring within the County: TMDLs, Ocean outfall, SWAMP, inland wastewater treatment plants and AB 411 (beach water quality) Programs.

One monitoring program that has been expanded in the Tentative Order is the Southern California Regional Bioassessment Study, in cooperation with the Southern California Coastal Water Research Project (SCCWRP). The Permittees acknowledge the value of this study and do not object to the additional requirement of fixed sites that are not a part of the current study design. However, the Tentative Order contains duplicative language with respect to this requirement. The requirement appears in both Attachment F - Monitoring Program, but also under the Watershed Initiative Participation in the body of the Tentative Order (Part 4. B. 2.). It is important that a requirement to participate in monitoring program, such as this one designed and managed by a third party, be written to allow flexibility to adjust to changes in the study's design. Since Attachment F can be modified by the Executive Officer, while a Part 4 revision requires action by your Board, we request deleting the requirement described in Part 4. B. 2 (but remaining in Attachment F).

Summary

The Permittees recognize that the Tentative Order is a significant step forward in addressing urban runoff in Ventura County. We would submit that the Tentative Order, when viewed in the whole and not as individual parts, is comprehensive and protective of water quality. However, the comprehensive nature of the Tentative Order will significantly increase local agency and citizen costs to implement the program. In light of these increased costs, we encourage the Regional Water Board to carefully consider the implications associated with any future modifications as such modifications to one program element would likely come at the expense of another. Again, we thank you and your staff for the time and effort in meeting with the Ventura County Permittees to work through the many issues in the previous draft orders. If you have any questions, please contact me at (805) 654-5051.

Sincerely,



Gerhardt J. Hubner
On Behalf of the Entire
Ventura Countywide
Stormwater Management Program

cc: Renee Purdy, Los Angeles Regional Water Quality Control Board
Ventura County City Managers
Marty Robinson, Ventura County Chief Executive Officer
Jeff Pratt, Ventura County Public Works Director
Ventura Countywide Stormwater Management Program Permittees

Attachments

- A. Table Comparing Attachment I and Tentative Order Reporting requirements
- B. Edits for Part 5 TMDL Provisions