



October 13, 2010

Via electronic mail

Mr. Arne Anselm
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Re: Comments on September 27, 2010 Ventura County Draft Technical Guidance Manual for Stormwater Quality Control Measures

Dear Mr. Anselm:

On behalf of the Natural Resources Defense Council (“NRDC”) and Heal the Bay (collectively “Environmental Groups”), we are writing with regard to the Draft Ventura County Technical Guidance Manual for Stormwater Quality Control Measures, Manual Update 2010, Stakeholder Draft, dated September 27, 2010 (“Draft Manual”). We appreciate the opportunity to comment on the Draft Manual and on issues discussed at the stakeholder meeting held by the Ventura Countywide Stormwater Quality Program on September 29, 2010. The Environmental Groups believe that the time allotted for comment, two weeks from the date of the stakeholder meeting, is not adequate to fully address the critical issues presented for implementation of the Ventura County MS4 permit by this 571 page document. However, with this consideration in mind, we offer the following comments on the Draft Manual to the Countywide Stormwater Quality Management Program.

1. The Draft Manual Must Establish Standards for Use of Biofiltration That Properly Implement Permit Requirements

The Ventura County MS4 Permit (Los Angeles Regional Water Quality Control Board Order No. R4-2010-0108, adopted July 8, 2010) states that, where onsite retention of the design storm volume is technically infeasible, an on-site biofiltration system may be used to satisfy the EIA limitation. Where discharge of any volume of the design storm will occur, the biofiltration system is required to be designed such that it “shall achieve 1.5 times the amount of stormwater volume and pollutant load reduction as would have been achieved by on-site retention” (Permit, at 4.E.III.1.(b).) While the Draft Manual requires that “Biofiltration BMPs must be

sized to treat 1.5 times the volume not retained using Retention BMPs,” (Draft Manual, at 2-14), this language fails to adequately implement the full requirements of the MS4 Permit.

Notably, the implementation language for the Draft Manual fails to address Permit requirements that biofiltration BMPs achieve equivalent stormwater volume reduction and pollutant load reduction as would be achieved by onsite retention of stormwater. In this regard, and in addition to the requirement that biofiltration BMPs be sized to treat 1.5 times the design storm volume described in Permit section 4.E.III.1.(c), to comply with the explicit terms of the Permit the Draft Manual must require that biofiltration BMPs demonstrate that they will actually achieve an equivalent pollutant load reduction to onsite retention practices. This provision is at the core of the Permit’s allowance for biofiltration practices, which, while often preferable to conventional stormwater controls, otherwise may still result in the discharge of significant pollutant loads to surface waters. The Draft Manual must also address the Permit’s requirement that biofiltration BMPs achieve equivalent stormwater volume reduction.

2. Technical Infeasibility Screening must follow the Clear Intent of the Permit

a. Existing Urban Centers

The New Development and Redevelopment Performance Criteria section of the Permit describes the limited opportunity for alternative compliance in cases of technical infeasibility. The overarching criterion for any project to be further evaluated for infeasibility is that it is located in an “existing urban center.”

To encourage smart growth and infill development of *existing urban centers* where on-site compliance with post-construction requirements may be technically infeasible, the permittees may allow projects that are unable to meet the Integrated Water Quality/Flow Reduction/Resources Management Criteria in subpart 4.E.III.1, above, comply with this permit through the alternative compliance measures described in subpart 4.E.III.2.(c), below.

(Permit, at 4.E.III.2.(a), emphasis added.) The genesis of the “off-ramp” for technical infeasibility took place during the NGO and Permittee negotiations over the permit language. The Permittees were concerned that developers would be discouraged from pursuing infill development and redevelopment without an infeasibility off-ramp. As a result the parties agreed that projects within an existing urban center could be screened for technical infeasibility. This intent is reflected in Permit section 4.E.III.2.(a). Thus the Technical Feasibility Screening section of the Draft Manual (section 3.2) and the accompanying flow charts must specify that the technical infeasibility screening is only applicable to projects in existing urban centers.

Problematically, there is no definition of “existing urban center” in the Manual’s Glossary. The maps in Appendix B use the term “existing urban area;” however, these mapped areas too broadly define an “existing urban center” by including all areas within city boundaries. Cities within Ventura County typically include a dense urban center surrounded by less densely developed or undeveloped areas. During discussions, the downtown Ventura area was often

given as an example of an area that should be considered for technical infeasibility. As a result, only the dense urban center, and not outlying sparsely or undeveloped areas, is to be included under the permit provision in section 4.E.III.2.(a). As currently written, the Draft Manual would potentially allow for development in low density, single family residential areas or greenfield development well outside the urban center to make a finding of infeasibility and participate in the Permit's alternative compliance program. The Draft Manual and its accompanying maps should be revised to limit the application of its technical infeasibility screening to "existing urban centers" by properly defining those areas based on unit housing density or other relevant criteria.¹

b. Technical Infeasibility Criteria

The Permit provides five examples of situations where technical infeasibility may occur within the existing urban center and allows for the Draft Manual to describe other potential technical "implementation constraints." (4.E.III.2.(b).) Section 3.2 of the Manual includes the five examples from the Permit and other possible conditions resulting in infeasibility. Several of these criteria as implemented by the Draft Manual either require additional clarification or serve to highlight the concerns regarding the definition of "existing urban centers" raised above.

Specifically, subsection 12 (Draft Manual, at 3-37) allows for "Redevelopment, infill, and Smart Growth projects," where "the density and/or nature of the project would create significant difficulty for compliance" with onsite retention standards, to establish a condition of technical infeasibility. Yet this type of development and its use as a criterion should by definition be limited only to dense, urban city-centers, demonstrating the need for the maps of existing urban centers to be properly constrained. Further, categories of development such as low income housing, while representing a laudable and necessary goal, are no more likely to encounter technical infeasibility than any other type of project. Where low income housing is a) located within a properly defined existing urban center, and is b) subject to one of the numerous identified conditions in subsection 12, including development as a smart growth or urban infill project, it will qualify for a finding of technical infeasibility regardless of its status as a low income housing project. This category should be removed from subsection 12. Likewise, projects defined as "Transit Oriented development (within ½ mile of a transit center)" do not in themselves provide any basis for a finding of technical infeasibility. Where such a project is spatially limited as infill, or subject to one of the other provisions such as presence of shallow groundwater or being characterized by geotechnical hazards, it may present technical infeasibility for onsite retention. However, simply being located within ½ mile of a "transit center" (a term not defined in the Draft Manual), provides no justification for demonstrating infeasibility, and should be removed as a category under subsection 12.

Additionally, the inability to provide sufficient demand for harvested stormwater is not in-and-of itself a reason for a determination of technical infeasibility (subsection 10). All

¹ For example, the West Virginia Statewide General NPDES Water Pollution Control Permit for small MS4s (West Virginia Department of Environmental Protection, Permit No. WV0116025, adopted June 22, 2009), uses a Floor to Area Ratio (FAR) of >2 or housing density of >18 units per acre as one possible criteria in determining incentive standards for certain types of development. (See West Virginia Permit, at C.b.5.a.ii.A.3)

infiltration, evaporation, and capture and use BMP options, not just harvesting practices, must be exhausted before an infeasibility determination can be made. The Manual should make this clarification.

Finally, the Draft Manual states that “[i]nfiltration rates of 0.5 in/hr or greater are considered feasible for infiltration” and “BMPs should not be designed for sites...with infiltration rates less than 0.5 in/hr.” (Pg 3-31). This proposed minimum infiltration rate is too conservative, as it fails to take into account the potential for use of amended soils to augment infiltration or the potential for installation of overlying vegetated canopy layers to intercept rainfall. Further, a soil being classified as Soil Numbers 1-3 does not necessarily mean that infiltration BMPs cannot be used (nor that there are no opportunities for capture and use or evaporation BMPs). A site-specific analysis is necessary to determine whether infiltration is feasible at a given site. Thus, this condition should be eliminated to prevent confusion.

3. The Manual’s BMP Performance Criteria Section is Inadequate

One of the most progressive parts of the Permit is the inclusion of BMP performance criteria. Specifically, the permit requires that treatment control BMPs be selected based on at least the median pollutant removal performance for effluent quality in the ASCE/USEPA International database. These requirements were developed during many months of permit language negotiations between the NGOs and Permittees. The parties agreed that flow based design criteria would not ensure that water quality standards are consistently met and therefore that BMP performance criteria were appropriate. There was general consensus that the ASCE/USEPA database provided the best performance data available and it was appropriate to use for this purpose. The NGO community proposed a 75th performance standard; however, the parties ultimately agreed upon the median performance standard. The Regional Board agreed with the proposal, as they voted on two separate occasions to adopt the Permit with the BMP performance criteria provisions.

A major short-coming of the Draft Manual is the lack of guidance on BMP performance criteria. In fact, section 3.4 and Appendix D provide little to no guidance and will likely further confuse developers. Although section 3.4 outlines several of the BMP performance criteria provisions, fails to provide guidance for selecting BMPs that will meet the performance criteria requirements. Appendix D primarily focuses on tearing apart the entire concept of BMP performance criteria instead of proposing means of implementing the important Permit Provisions. In this light, Appendix D serves no purpose and should be eliminated from the Draft Manual. The BMP performance requirements are in place in the adopted Permit, and the Permittees are tasked with making this concept, which was vetted in detail, work in the field. In sum, the Manual must provide guidance to developers and others involved in site design on the selection and implementation of appropriate treatment control BMPs.

4. The Manual Should Provide Guidance on Erosion Potential

Section 4.E.III.3 of the Permit discusses Hydromodification Control Criteria to prevent accelerated downstream erosion. This is achieved by maintaining the project’s pre-project

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stormwater runoff flow rates and durations. The Permit outlines the calculation of the Erosion Potential to meet the Permit requirements. Section 2.9 of the Manual discusses Hydrmodification Requirements but fails to provide sufficient guidance on complying with the Permit requirements. For instance, there is no discussion on calculating the Erosion Potential and designing a site to meet this standard. The Manual should provide more detail on this element.

5. Conclusion

Environmental Groups appreciate this opportunity to comment on the Draft Manual. Please feel free to contact us with any questions or concerns you may have.

Sincerely,



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Project Attorney
Natural Resources Defense Council



Kirsten James
Director of Water Quality
Heal the Bay