San Diego Regional Water Quality Control Board

Executive Officer's Report

April 8, 2009

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SAN DIEGO REGIONAL WATER QUALITY CONTROL BOARD

EXECUTIVE OFFICER'S REPORT

April 8, 2009

PART A
SAN DIEGO REGION STAFF ACTIVITIES *(Staff Contact)*

1. April 2009 Personnel Report *(DiAnne Broussard)*
The Organizational Chart of the California Regional Water Quality Control Board, San Diego Region (Regional Board) can be viewed at http://www.waterboards.ca.gov/sandiego/about_us/org_charts/orgchart.pdf

Recruitment
The Regional Board is continuing to conduct interviews for an Environmental Program Manager I to lead the Water Quality and Restoration Standards Branch. The last round of interviews are scheduled for the second week in April.

The Regional Board is also recruiting for an Office Technician to fill the vacant Receptionist position. Because of the Budget situation recruitment is restricted to employees within the State and Regional Water Quality Control Boards. No applicants from outside the department can be considered.

Vacant positions for the State and Regional Boards are posted on the State Board web page at http://www.waterboards.ca.gov/about_us/employment/

PART B
SIGNIFICANT REGIONAL WATER QUALITY ISSUES

1. Sanitary Sewer Overflows (SSOs) January-February 2009 *(Joann Cofrancesco) (Attachment B-1)*
The following is a summary of the sewage spills that occurred during the period January and February 2009 that have been reported and certified by March 31, 2009. Sewage Collection Agencies now report Sanitary Sewer Overflows (SSOs) on-line at the State Water Resources Control Board's CIWQS database pursuant to the requirements of State Board Order No. 2006-0003-DWQ (*General Statewide Waste Discharge Requirements for Sewage Collection Agencies*). Reports on sewage spills are available on a real-time basis to the public from the State Board's webpage at: https://ciwqs.waterboards.ca.gov/

From January 1 to January 31, 2009, there were 14 public SSOs in the San Diego Region that were reported on-line at the State Board's CIWQS database. These included four spills of 1,000 gallons or more and three that reached surface waters, including storm drains. The combined total volume of reported

sewage spilled from all publicly-owned collection systems for the month of January 2009 was 34,576 gallons.

From February 1 to February 28, 2009, there were 16 public SSOs in the San Diego Region that were reported on-line at the State Board's CIWQS database. These included six spills of 1,000 gallons or more and seven that reached surface waters, including storm drains. The combined total volume of reported sewage spilled from all publicly-owned collection systems for the month of February 2009 was 72,518 gallons.

In January and February 2009, 32 discharges of untreated sewage from private laterals were reported by the collection agencies on-line pursuant to the San Diego Regional Board Order No. R9-2007-0005 (*Waste Discharge Requirements for Sewage Collection Agencies in the San Diego Region*). None of the spills were 1,000 gallons or more and eight of the spills reached surface waters, including storm drains. The combined total volume of reported private lateral sewage discharges for the months of January and February 2009 was 4,117 gallons.

A total of 0.08 and 2.63 inches of rainfall were recorded at San Diego's Lindbergh Field for January and February 2009, respectively. For comparison, in January and February 2008, 20 and 17 SSOs were reported during a period of time when 5.13 and 1.95 inches of rainfall was recorded at Lindbergh Field, respectively. A total of 36 private lateral sewage discharges were reported during January and February 2008.

Attached are three tables titled:

- "January 2009 - Summary of Public Sanitary Sewer Overflows in Region 9"
- "February 2009 - Summary of Public Sanitary Sewer Overflows in Region 9"
- "January and February 2009 - Private Lateral Sewage Discharges in Region 9."

Additional information about the Regional Board's SSO regulatory program is available at the Regional Board's web site at http://www.waterboards.ca.gov/sandiego/programs/sso.html.

2. Enforcement Actions for March 2009 (*Jeremy Haas*)

The following is a summary of all enforcement actions taken or initiated during the month of March 2009. During this period the California Regional Water Quality Control Board, San Diego Region (Regional Board) initiated six enforcement actions: 1 amended Administrative Civil Liability Complaint; 1 Cleanup and Abatement Order; 1 Investigative Order addendum, 2 Notices of Violation; and 1 Staff Enforcement Letter.

In addition to the summary information provided below, access to information on violations, enforcement actions, and Mandatory Minimum Penalties (MMPs) on a

real-time basis is available to the public from the State Water Resources Control Board's Internet webpage at:
http://www.waterboards.ca.gov/water_issues/programs/enforcement/

ADMINISTRATIVE CIVIL LIABILITY COMPLAINTS

Amended ACL Complaint R9-2008-0161 against Mountain Water Ice Company

Complaint No. R9-2008-0161 in the amount of $243,000 was amended on March 30, 2009 for alleged violations of NPDES Order No. R9-2005-0015, which prescribes effluent limitations for the discharge of defrost water, evaporative condenser overflow, and melted ice to the San Luis Rey River. The amended complaint reflects a reduction in the number of previously-alleged violations subject to mandatory minimum penalties for reported violations that were subsequently determined to not adequately represent the discharge. The amended complaint also adds new alleged violations that were reported subsequent to the issuance of the original complaint. The Board is tentatively scheduled to consider a tentative ACL Order for the alleged violations on May 13, 2009.

CLEANUP AND ABATEMENT ORDERS

Cleanup and Abatement Order No. R9-2009-0017. APRO, LLC

CAO Order No. R9-2009-0017 was issued on March 30, 2009 to APRO, LLC as the owner of property located at 3010 Market Street, San Diego. The CAO requires APRO, LLC to submit technical reports and to cleanup and abate the effects of an unauthorized release of petroleum hydrocarbons from the operating gasoline facility at the site. The CAO requires submission of a workplan by July 31, 2009 and completion of cleanup activities by September 30, 2010. A final report documenting cleanup actions is due on May 29, 2009.

INVESTIGATIVE ORDERS

Addendum to Investigative Order No. R9-2008-0097, County of San Diego

Addendum No. 1 to Investigative Order No. R9-2008-0097 revises compliance dates for the County of San Diego to amend a report of waste discharge and comply with corrective action requirements of Title 27 of California Code of Regulations for a release of wastes from the Bonsall County Landfill. The dates were extended because the County has had difficulty gaining access to offsite wells. Access to the wells is necessary to delineate the release and develop a corrective action plan.

NOTICES OF VIOLATION

NOV No. R9-2009-0045 to City of San Marcos

An NOV was issued to the City of San Marcos on March 24, 2009 for alleged violations of the San Diego area municipal storm water permit, Order No. R9-2007-0001. The NOV alleges the City failed to implement a verification program for post-construction treatment control best management practices. The alleged

violation was discovered during review of the City's annual report and verified during a follow-up meeting with the City's storm water staff.

BBA Partners, LLC., The Heights Road Improvement at Valley View Road, Poway

NOV No. R9-2009-0039 was issued to BBA Partners, LLC. on March 24, 2009 for alleged violations of the statewide General NPDES Construction Permit, Order No. 99-08-DWQ. Violations were noted during a staff inspection on March 11, 2009. Alleged violations include failure to implement and maintain construction best management practices (BMPs), failure to prevent unauthorized discharges of sediment, and failure to implement adequate post-construction BMPs.

STAFF ENFORCEMENT LETTERS

San Diego County Water Authority, Twin Oaks Valley Water Treatment Plant

The SEL was issued on March 2, 2009 to the San Diego County Water Authority for an alleged violation of the statewide General NPDES Construction Permit, Order No. 99-08-DWQ. Violations were noted during a staff inspection on February 17, 2009 following a request to terminate coverage under the General NPDES permit.

3. Mission Valley Terminal Meeting with City of San Diego *(Sean McClain)*

The City of San Diego (City) requested a meeting with the Regional Board staff to discuss the progress of the cleanup at Mission Valley Terminal (MVT) and the adjacent Qualcomm Stadium property. Representatives from the City Attorney's office, City Water Department, Intera Engineering (City's technical consultant), and Drs. Margaret Eggers and Paul Johnson (Regional Board's technical consultants), met with Regional Board staff (Sean McClain and Craig Carlisle), on March 9, 2009, to discuss the status of the MVT cleanup progress, assessment of cleanup performance, leak detection methods, and the groundwater hydraulic containment system.

The City provided input for various aspects of the cleanup and monitoring at MVT, most of which focused on tracking the cleanup progress towards the deadlines established in the Cleanup and Abatement Order. The Regional Board staff and our technical consultants continue to meet with Kinder Morgan (Discharger) quarterly to discuss cleanup progress, metrics used to meet the cleanup deadlines, and the input provided by the City of San Diego.

The Regional Board staff offered to arrange a stakeholder meeting with the City and the Discharger to allow better communication between all of the parties. The City, however, declined the offer.

Additional information on the MVT cleanup may be found on the State Water Resource Control Board's GeoTracker website at

http://www.geotracker.waterboards.ca.gov/ (type "SL607392800" in the Global ID and choose "Search for All Sites") to obtain recent groundwater and remediation status reports in PDF format.

4. City of Escondido Indirect Potable Reuse Project Study *(Fisayo Osibodu)*
The City of Escondido is evaluating the potential for using highly treated recycled water to augment its raw water supply in northern San Diego County. As part of this evaluation, the City and its consultant, Brown and Caldwell, recently met with the staff from the Groundwater Basins Branch and the California Department of Public Health (CDPH) to discuss the regulatory factors for consideration in developing an indirect potable reuse project.

The City is investigating two alternatives for using 16.3 million gallons per day (approximately 18,256 acre feet a year) of highly treated recycled water from the Hale Avenue Regional Reclamation Facility (Hale Avenue RRF). One alternative is discharging recycled water either to Lake Dixon, Lake Wohlford, or to a new reservoir, which would be constructed for the IPR project. This alternative would blend the discharge with raw water supplies in the selected reservoir, and then withdraw the blended water for further treatment. The second alternative would result in discharging the highly treated effluent to the San Pasqual Basin. Groundwater withdrawn from the basin will be disinfected prior to being introduced to the potable water distribution system.

The initial feasibility study is scheduled to be completed later this month. Based upon the results of this study, the City will decide which alternative, if any, will be investigated in greater detail. The Groundwater Basins Branch staff will continue to coordinate with CDPH to provide timely input to the City in support of planning and development of this project.

5. Finding of Adequacy For Updated San Diego Countywide Model Standard Urban Stormwater Mitigation Plan (SUSMP) Requirements For Development Applications *(Eric Becker) (Attachment B-5)*
The San Diego Municipal Storm Water Copermittees (Copermittees) were required to submit an updated Model SUSMP within 18 months of adoption of the San Diego Municipal Storm Water Order No. R9-2007-0001 (MS4 Permit). This updated Model SUSMP defines the minimum Best Management Practices to be incorporated into the Copermittees' priority development projects.

On July 24, 2008, the 21 Copermittees submitted a first draft of the updated Model SUSMP. In September 2008, the Regional Board and Natural Resources Defense Council (NRDC) provided comments on the updated Model SUSMP for the Copermittees to consider and respond to. The Copermittees also met with NRDC to discuss their comments and suggested changes. The Copermittees resubmitted the Model SUSMP on January 2, 2009 with changes and responses to Regional Board and NRDC comments.

On March 25, 2009, the Regional Board sent a letter (Attachment B-5a) to the Copermittees concluding that the January 2, 2009 updated Model SUSMP submitted by the Copermittees adequately addressed the Regional Board's comments, thereby complying with the requirements of MS4 Permit. On February 23, 2009, NRDC submitted additional comments (Attachment B-5b) and recommended new changes that were not incorporated into the January 2, 2009 Model SUSMP. The Regional Board has concluded that any remaining changes NRDC finds necessary are not required by the MS4 Permit. The Regional Board did request, however, that the Copermittees consider the NRDC's February 23, 2009 comments during update of the local SUSMPs. The Copermittees have 1-year (until March 25, 2010) to update their local SUSMPs to implement the requirements of the Model SUSMP and MS4 Permit.

6. 2009 National Nonpoint Source Conference for State and EPA Program Managers *(Dave Gibson)*

On February 24-26, 2009, the US EPA National Nonpoint Source Conference was held in San Diego, CA. All 50 States, 10 EPA Regions, 3 Tribal Nations, and the U.S. Territory of Guam were represented at the Conference. The National Nonpoint Source Conference is held biannually. Chiara Clemente and Dave Gibson attended the conference on behalf of the San Diego Regional Water Board.

The conference agenda included opening presentations by U.S. EPA Region 9 Water Division Director Alexis Strauss, James Giannopoulos, Assistant Chief, Division of Water Quality, State Water Board, Dave Gibson, Senior Environmental Scientist, San Diego Regional Water Board, and Benita Best-Wong, Director, Assessment and Watershed Protection Division, Office of Water, US EPA.

The sessions included presentations from throughout the United States on examples of effective implementation of NPS pollution reduction plans, watershed plans, and TMDLs; the role of NPS authorities to achieve water quality results; evaluating program effectiveness; and nonpoint source pollution assessment and water quality monitoring. The conference also included a "Google Earth"® Flight over the Tijuana River Watershed presented by Doug Liden, US EPA Region 9. Two afternoons of the Conference were dedicated to group break-out discussions, the "NPS Café," during which questions posed during presentations were discussed by the participants.

On the last day of the Conference, about 70 of the attendees participated in a "Field Tour of the Otay and Tijuana River Watersheds: Water Quality and Nonpoint Source Challenges of Southern San Diego and the International Border." The field trip included stops at the Rancho Jamul Ecological Reserve and the Tijuana Estuary. Speakers at Rancho Jamul included Mark Tucker and Brian Monaghan (Wildlands) and Tim Dillingham (California Department of Fish and Game). Speakers at the Tijuana Estuary included John Robertus, Regional

Board Executive Officer, Clay Philips superintendent for California State Parks and manager of the Tijuana River National Estuarine Research Reserve, Dr. Cindy Lin, US EPA, Doug Liden, US EPA, and Dr. Oscar Romo, UCSD.

Information including the presentations of the speakers can be found at: http://ttdffxs-hudson.tetratech-ffx.com/agenda.htm

7. Beach Water Quality Monitoring (*Bruce Posthumus*) *(Attachment B-7)*
Each year since 1999, county health departments have been required to monitor waters at certain coastal beaches for microbiological indicators during the period from April 1 through October 31. County health departments have also been required to close and/or post notifications at and about those beaches if sanitation standards are not met. These requirements, which were established by Assembly Bill 411 (AB 411) (Wayne, 1997), apply only if the State provides sufficient funding to carry out such activities.

As indicated in a November 2008 Executive Officer Report, although funding for such activities was eliminated from the State budget for fiscal year 2008-2009 by a line-item veto by the Governor, the State Water Resources Control Board (SWRCB) agreed to provide funding for continuation of such activities. However, as indicated in a February 2009 Executive Officer report, the funding to be provided by the SWRCB was to have come from state bond funds, and expenditures of such funds have been frozen, so the SWRCB will not be able to provide funding for such activities until the freeze is lifted. As of April 2, 2009, the SWRCB is still not able to provide funding for such activities.

As a result of the loss of State funding, it appears that beach water quality monitoring and related activities in the San Diego region, in both Orange County and San Diego County, will be reduced, but not stopped entirely, during the April 1 through October 31 period. See Attachment B-7 – article regarding San Diego County's decision to provide $150,000 to do limited monitoring.

Media reports on this topic are available at:
http://www3.signonsandiego.com/stories/2009/mar/25/1m25water002429-coastal-water-quality-testing-gets/?uniontrib

http://www3.signonsandiego.com/stories/2009/mar/18/bn18quality-water-testing/

http://www3.signonsandiego.com/stories/2009/feb/22/1n22quality00125-water-testing-left-high-and-dry/?uniontrib

http://www.ocregister.com/articles/program-state-county-2170268-water-governor

The text of AB 411 is available at:
http://www.leginfo.ca.gov/pub/97-98/bill/asm/ab_0401-0450/ab_411_bill_19971008_chaptered.pdf.

8. Wetlands Recovery Project (*Bruce Posthumus*)
The Southern California Wetlands Recovery Project (WRP) is made up of a number of state and federal agencies, including the San Diego Regional Water Quality Control Board (SDRWQCB). The WRP works cooperatively with local governments, businesses, non-profit organizations, scientists, and other stakeholders to protect and restore wetlands, streams, and rivers in the coastal watersheds of southern California, from Point Conception to the Mexican border.

The WRP Board of Governors is the decision-making body of the WRP. The Board of Governors consists of high level representatives from each member agency. Dr. Richard Wright represents the SDRWQCB on the Board of Governors. The WRP also includes the Wetlands Mangers Group (which consists of staff representatives of all the member agencies), the Science Advisory Panel, the Public Advisory Committee, and task forces in each of the five coastal counties in southern California. Bruce Posthumus represents the SDRWQCB in the Wetlands Managers Group and the WRP task forces for San Diego County and Orange County. The State Coastal Conservancy provides staffing for the WRP.

The efforts of the WRP are guided by the Regional Restoration Strategy and the Work Plan. The Regional Restoration Strategy sets forth long-term goals and specific implementation strategies. The Work Plan consists of high priority wetland acquisition, planning, and restoration projects which the WRP works to implement. The current Work Plan includes several projects in the San Diego region. These projects are located in or are related to Laguna Canyon Creek, Wood Canyon Creek, Aliso Creek, Trabuco Creek, San Juan Creek, San Luis Rey River, Buena Vista Creek, Buena Vista Lagoon, Batiquitos Lagoon, Escondido Creek, San Elijo Lagoon, Los Peñasquitos Lagoon, Rose Creek, Famosa Slough, Otay River, south San Diego Bay, Tijuana Estuary, and other areas of the San Diego region.

Since much of the work of the WRP is paid for with state bond funds, the freeze on expenditure of such funds has stopped work on many WRP activities and projects, including the Science Advisory Panel and state-funded parts of many projects on the WRP Work Plan. One WRP program that does not rely on state bond funds and is not affected by the freeze is the Community Wetland Restoration Grant Program (previously known as the "Small Grants Program"). Applications for grants from this program are due April 24, 2009. More information about this program is available at:
http://www.scwrp.org/pdfs/CWRGP-application-RFP-2009.pdf

More information about the WRP is available at http://www.scwrp.org/index.htm.

9. Regional Board Letter to North County Habitat Bank *(Chiara Clemente) (Attachment B-9)*
The North County Habitat Bank (NCHB or Bank) is a mitigation bank in Carlsbad, California that sells creation/restoration and enhancement credits to project proponents that are required to conduct compensatory mitigation for discharges of fill material that temporarily degrade or permanently destroy surface waters of the state. Through the course of reviewing Clean Water Act Section 401 certification applications and amendments where mitigation was proposed at NCHB, the Regional Board staff raised concerns with regards to the existence of "creation" credits from the Bank, and with the manner in which mitigation credits were sold and released from the NCHB ledger. On March 5, 2009, the Regional Board sent a letter to NCHB (attached), summarizing the Board's findings with regards to the above concerns, and clarifying how the Board intends to proceed with 401 water quality certification applications proposing mitigation from the NCHB.

In that letter, the Regional Board objected to the manner in which the Bank released mitigation credits (from the ledger) and cautioned NCHB from interpreting the certification requirements on behalf of the project proponents. For future projects where an applicant intends to use the Bank's services, 401 certifications will clearly state how the specific mitigation can be satisfied with the purchase of credits from NCHB. With regards to the existence of Creation at the NCHB, staff concluded that what the Bank refers to as "Creation/Restoration" credits could be considered suitable compensatory or punitive mitigation for permanent impacts to waters of the state, under project-specific conditions. Regional Board staff will continue to evaluate proposals to use the Bank's services on a case-by-case basis, and will require 401 certification applicants to (1) clearly identify what services are being purchased (in terms of both acreage and type); (2) clearly identify what portion of those specific services are intended to mitigate for temporary or permanent impacts; and (3) receive approval from the Regional Board for the proposed mitigation prior to purchasing credits from the Bank.

Additionally, staff has brought the above issues to the attention of the various resource agencies involved in the oversight of mitigation banks in our Region (i.e. USEPA, USFWS, USACE, and CDFG) for further investigation.

10. Fugitive Dust Control *(Dat Quach and Tony Felix)*
On March 3, 2009, Dat Quach and Tony Felix attended a public meeting by the San Diego County Air Pollution Control District (District) to consider comments and offer Regional Board perspective on the District's proposed new Rule 55-Fugitive Dust Control. Because San Diego County does not meet the State Ambient Air Quality Standards for particulate matter, State Senate Bill 656 from 2003 requires the California Air District to adopt additional requirements to control particulate matter pollution. Reducing particulate matter (very small liquid and solid particulates suspended in the air) is one of California's highest public

health priorities. The proposed new Rule 55 fulfills the District's commitment to adopt fugitive dust control measures addressing active construction and demolition projects capable of generating fugitive dust emissions. California air quality standards are designed to protect the most sensitive groups of people, including infants and children, the elderly and persons with heart or lung disease. The public comment period for the proposed rule ended March 31, 2009 with a proposed adoption date of June 24, 2009 and an effective date of December 24, 2009. The only permit under the auspices of the Regional Board that deals directly with dust control is the statewide general industrial storm water permit. Atmospheric deposition, however, does have the potential to adversely impact water quality.

11. Orange County Environmental Health Division Regulation of Recycled Water Use Projects *(Cathryn Henning)*

During the recycled water workshop in March, a question was raised regarding the consistency of regulation of recycled water projects by the Orange County Environmental Health Division (Orange County) and County of San Diego Department of Environmental Health (San Diego County). Both counties regulate the use of recycled water through a delegation agreement with the California Department of Public Health (CDPH). Orange County operates in a similar manner to San Diego County in that all recycled water use plans and engineering reports are reviewed in conjunction with the CDPH prior to initiation of construction activities. In addition, once construction is near completion, an initial cross-connection control shut down test is performed by inspectors in both San Diego and Orange County. All counties throughout California are subject to the California Plumbing Code which requires shut down tests at all dual plumbed facilities at least once every four years.

In Orange County, the individual water districts have taken the initiative to promote the use of recycled water. Orange County works closely with these districts by assisting in developing the recycled water project, reviewing project plans, and performing initial and periodic cross-connection tests. The Irvine Ranch Water District (IRWD) is a unique example of this effort to encourage the use of recycled water. The IRWD not only provides recycled water to various projects for irrigation purposes, but also mandates that new homes, with larger lots in specific communities, use recycled water for irrigation of their grounds. The IRWD jointly with Orange County have a streamlined method for establishing dual plumbing systems in these communities as well as in office buildings throughout the city of Irvine.

PART C
STATEWIDE ISSUES OF IMPORTANCE TO THE SAN DIEGO REGION

There are no items to report in Part C this month.

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

SIGNIFICANT NPDES PERMITS, WDRs, AND ACTIONS OF THE REGIONAL BOARD

April 8, 2009

APPENDED TO EXECUTIVE OFFICER REPORT

DATE OF REPORT
April 8, 2009

TENTATIVE SCHEDULE
SIGNIFICANT NPDES PERMITS, WDRS, AND ACTIONS OF THE SAN DIEGO RWQCB

Scheduled Board Meeting Date	Action Agenda Item	Action Type	Initial Document Application Complete	Discharge & Receving Water Quality Limits and Monitoring Plan Known	Draft Complete	Public Review & Comment	Consent Item	Comments
May 13, 2009 Regional Board Meeting San Diego Regional Water Board Office								
5/13/2009	Constructed Seawall At First St. Coronado Dewatering Discharge To San Diego Bay *(Frank Melbourn)*	Hearing: ACL	100%	NA	50%	0%	No	Mandatory Minimum Penalty ACL $24,000
5/13/2009	Mountain Water Ice Discharges to San Luis Rey River *(Rebecca Stewart)*	Hearing: ACL	100%	NA	80%	0%	Yes	Mandatory Minimum Penalty ACL
5/13/2009	Northrup Grumman *(Cathryn Henning)*	WDR Rescission	100%	100%	100%	0%	Yes	Discharge covered under waiver of WDRs.
5/13/2009	NPDES Permit Rescissions-- Frank J. Konyn Dairy, Van Ommering Dairy, Tom Van Tol Dairy, *(Michelle Mata)*	NPDES Permit Rescission	0%	0%	100%	50%	No	
5/13/2009	South Orange County Wastewater Authority, South Coast Water District, Groundwater Recovery Facility *(Jeremy Haas)*	Hearing: ACL	50%	NA	100%	0%	No	Mandatory Minimum Penalty ACL
5/13/2009	Thousand Trails Pio Pico *(Fisayo Osibodu)*	WDRs Revision	20%	0%	0%	0%	Yes	Name change
June 10, 2009 Regional Board Meeting San Diego Regional Water Board Office								

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TENTATIVE SCHEDULE

SIGNIFICANT NPDES PERMITS, WDRS, AND ACTIONS OF THE SAN DIEGO RWQCB

Scheduled Board Meeting Date	Action Agenda Item	Action Type	Initial Document Application Complete	Discharge & Receving Water Quality Limits and Monitoring Plan Known	Draft Complete	Public Review & Comment	Consent Item	Comments
6/10/2009	Ametek Inc. *(Laurie Walsh / John Anderson)*	ACL Settlement	NA	NA	60%	NA	No	Tentative settlement agreement reached. Settlement Agreement and new CAO are being drafted.
6/10/2009	BAE Systems San Diego Ship Repair Shipyard - San Diego Bay *(Vicente Rodriguez)*	NPDES Permit Reissuance	100%	90%	80%	0%	No	NPDES Workplan FY2007-08
6/10/2009	CalTrans - Tecate Truck Station *(Cathryn Henning)*	WDRs Revision	90%	0%	0%	0%	Yes	Revisions to the MRP
6/10/2009	Carlsbad Energy Center, LLS Power, Agua Hedionda Lagoon Seawater Intake and Brine Discharge To Pacific Ocean *(Michelle Mata)*	NPDES Permit New	90%	80%	50%	0%	No	Proposed use of existing Encina Power Station Intake structure
6/10/2009	City of San Diego Pt. Loma Ocean Outfall Discharge to Pacific Ocean - Deliberation and Adoption of NPDES Permit *(Melissa Valdovinos / Brian Kelley)*	NPDES Permit Reissuance	100%	90%	90%	90%	No	Pending resolution of issues raised by USEPA
6/10/2009	Hanson Elementary School *(Cathryn Henning)*	WDRs Revision	90%	80%	80%	0%	yes	Change in point of compliance

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TENTATIVE SCHEDULE

SIGNIFICANT NPDES PERMITS, WDRS, AND ACTIONS OF THE SAN DIEGO RWQCB

Scheduled Board Meeting Date	Action Agenda Item	Action Type	Initial Document Application Complete	Discharge & Receving Water Quality Limits and Monitoring Plan Known	Draft Complete	Public Review & Comment	Consent Item	Comments
6/10/2009	Hubbs Research Facility Carlsbad - Agua Hedionda Lagoon *(Michelle Mata)*	NPDES Permit Reissuance	100%	80%	80%	50%	No	Pending receipt of information from Hubbs Res.
6/10/2009	Initial Hearing - 2008 Fed. Clean Water Act Sec. 303(D) List Of Water Quality Segments *(David Gibson)*	Hearing: CWA 303(d) WQ List	NA	NA	50%	0%	No	
6/10/2009	Kkottongnae Retreat Camp *(Cathryn Henning)*	WDRs Revision	0%	0%	0%	0%	yes	Change in facility
6/10/2009	NASSCO / General Dynamics Corp. - Shipyard San Diego Bay *(Vicente Rodriguez)*	NPDES Permit Reissuance	100%	90%	80%	0%	No	NPDES Workplan FY 2007-08
6/10/2009	Oakzanita Springs Park *(Fisayo Osibodu)*	WDRs Revision	100%	50%	50%	0%	Yes	Owner change
6/10/2009	Rancho Corrido RV Park (*Fisayo Osibodu*)	WDRs Revision	50%	50%	0%	0%	No	Expansion of Facility. Need to resolve CEQA issue w/County.

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SIGNIFICANT NPDES PERMITS, WDRS, AND ACTIONS OF THE SAN DIEGO RWQCB

Scheduled Board Meeting Date	Action Agenda Item	Action Type	Initial Document Application Complete	Discharge & Receving Water Quality Limits and Monitoring Plan Known	Draft Complete	Public Review & Comment	Consent Item	Comments
6/10/2009	Sweetwater Authority Groundwater Demineralization *(Michelle Mata)*	NPDES Permit Reissuance	0%	80%	0%	0%	No	
6/10/2009	US Navy Graving Dock San Diego Bay *(Vicente Rodriguez)*	NPDES Permit Reissuance	100%	90%	20%	0%	No	NPDES Workplan FY 2008-09
6/10/2009	US Navy-- Naval Base Pt. Loma - San Diego Bay *(Vicente Rodriguez)*	NPDES Permit Reissuance	100%	90%	80%	0%	No	NPDES Workplan FY 2007-08
6/10/2009	US Navy--Naval Base Coronado - San Diego Bay *(Vicente Rodriguez)*	NPDES Permit Reissuance	100%	90%	80%	0%	No	NPDES Workplan FY 2007-08
6/10/2009	US Navy--Naval Base San Diego - San Diego Bay *(Vicente Rodriguez)*	NPDES Permit Reissuance	100%	90%	80%	0%	No	NPDES Workplan FY 2007-08
6/10/2009	Western MWD *(Fisayo Osibodu)*	New WRP	50%	80%	80%	50%	yes	Recycled Water Purveyance. Waiting for CEQA Doc.
July 1, 2009 Regional Board Meeting Orange County Location								

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Scheduled Board Meeting Date	Action Agenda Item	Action Type	Initial Document Application Complete	Discharge & Receving Water Quality Limits and Monitoring Plan Known	Draft Complete	Public Review & Comment	Consent Item	Comments
7/1/2009	Initital Hearing - Orange County Municipal Storm Water Permit *(Ben Neill / James Smith)*	NPDES Permit Reissuance	100%	80%	80%	0%	No	Pending resolution of issues raised by USEPA
August 12, 2009 Regional Board Meeting San Diego Regional Water Board Office								
8/12/2009	Adoption - Orange County Municipal Storm Water Permit *(Ben Neill / James Smith)*	Adoption: NPDES Permit Reissuance	0%	0%	0%	0%	No	
8/12/2009	Adoption Hearing - 2008 Fed. Clean Water Act Sec. 303(D) List of Water Quality Segments *(David Gibson)*	Adoption: CWA 303(d) WQ List	0%	0%	0%	0%	No	
8/12/2009	Agriculture Waiver Status Report *(Peter Peuron)*	Status Report	NA	NA	NA	NA	NA	
8/12/2009	Anza Commercial Center *(Fisayo Osibodu)*	New WDRs	90%	50%	0%	0%	no	Commercial OWTS
8/12/2009	Color Spot Nursery *(Morris)*	WDRs Revision	100%	50%	0%	0%	no	Application of Ag Waiver

DATE OF REPORT
April 8, 2009

TENTATIVE SCHEDULE
SIGNIFICANT NPDES PERMITS, WDRS, AND ACTIONS OF THE SAN DIEGO RWQCB

Scheduled Board Meeting Date	Action Agenda Item	Action Type	Initial Document Application Complete	Discharge & Receving Water Quality Limits and Monitoring Plan Known	Draft Complete	Public Review & Comment	Consent Item	Comments
8/12/2009	Initial Hearing -2008 Basin Plan Triennial Reivew *(Deborah Woodward)*	Hearing: Basin Plan Triennial Review	NA	0%	0%	0%	No	
8/12/2009	NPDES General De Minimis Discharges Permit - San Diego Region *(Michelle Mata)*	NPDES Permit Adoption	NA	0%	0%	0%	No	
8/12/2009	NPDES General Permit Hydrostatic Testing and Potable Water Discharge *(Michelle Mata)*	NPDES Permit Reissuance	NA	100%	80%	0%	No	NPDES Workplan FY 2006-07
8/12/2009	Oglebay Norton - Mission Viego Sand *(Cathryn Henning)*	WDRs Revision	50%	100%	0%	0%	yes	Revisions to the MRP

January 2009 - Summary of Public Sanitary Sewer Overflows in Region 9

Responsible Agency	Collection System	Total Number of SSO locations	Total Vol of SSOs (gal)	Total Vol Recover (gal)	Total Vol Reach Surface Water	Percent Recover	Percent Reach Surface Water	Miles Pressure Sewer	Miles Gravity Sewer	Miles of Laterals	Total Number of SSO locations per 100 miles of Sewer	Tot Vol of SSOs Reach Surface Water per 100 miles of Sewer
CORONADO CITY	City Of Coronado CS	1	35	35	0	100	0	6.6	39.3	1	2.1	0
Eastern Municipal Water District	Eastern Municipal Water District CS	1	1,500	1,050	450	70	30	105	1,869.00	0	0	22.7
Fallbrook Public Utility Dist	Fallbrook Plant 1, Oceanside of CS	1	550	0	0	0	0	4.6	76.6	0	1.2	0
La Mesa City	City Of La Mesa CS	2	550	500	0	90	0	0	155	0	1.2	0
Oceanside PWD	La Salina WWTP, Oceanside Otfl CS	1	25,000	25,000	0	100	0	39	450	0	0.2	0
RANCHO SANTA FE COMM SERV DIST	Santa Fe Valley CS	1	525	2,500	0	476	0	2	14.2	0	6.1	0
SOLANA BEACH, CITY OF	City Of Solana Beach CS	1	135	135	0	100	0	2	39	0.1	2.4	0
San Diego City	San Diego City CS	6	6,281	4,400	383	70	6	139	2,991.00	2,000.00	0.1	7.4
Totals		14	34,576	33,620	833			298.2	5,634.00	2,001.10		

Attachment B-1

February 2009 - Summary of Public Sanitary Sewer Overflows in Region 9

Responsible Agency	Collection System	Total Number of SSO locations	Total Vol of SSOs (gal)	Total Vol Recover (gal)	Total Vol Reach Surface Water	Percent Recover	Percent Reach Surface Water	Miles Pressure Sewer	Miles Gravity Sewer	Miles of Laterals	Total Number of SSO locations per 100 miles of Sewer	Tot Vol of SSOs Reach Surface Water per 100 miles of Sewer
Chula Vista City	City Of Chula Vista CS	1	1,500	700	800	46	53	2.6	474	0	0.2	167.8
Fallbrook Public Utility Dist	Fallbrook Plant 1, Oceanside of CS	1	225	15	0	6	0	4.6	76.6	0	1.2	0
Oceanside PWD	La Salina WWTP, Oceanside Otfl CS	2	1,532	800	732	52	47	39	450	0	0.4	149.6
San Diego City	San Diego City CS	8	69,092	63,250	2,702	91	3	139	2,991.00	2,000.00	0.1	52.6
UC San Diego	University Of California, San Diego CS	2	150	50	0	33	0	2	25	3	6.6	0
Vallecitos Water District	Meadowlark CS	2	19	4	0	21	0	19.5	247	0	0.7	0
Totals		16	72,518	64,819	4,234			206.7	4,263.60	2,003.00		

January and February 2009 - Summary of Private Lateral Sewage Discharges in Region 9

Reporting Agency	Collection System	Total Number of PLSD locations	Total Vol of PLSDs (gal)	Total Vol Recover (gal)	Total Vol Reach Surface Water	Percent Recover	Percent Reach Surface Water	Miles Private Lateral	Total Number of PLSD locations per 100 miles of Sewer	Tot Vol of PLSDs Reach Surface Water per 100 miles of Sewer
CARLSBAD MWD	Carlsbad MWD CS	4	123	95	0	77	0	124	3.2	0
Chula Vista City	City Of Chula Vista CS	3	585	485	100	82	17	0	0	0
Del Mar City	City Of Del Mar CS	1	100	100	0	100	0	25	4	0
EL CAJON, CITY OF	City Of El Cajon CS	4	180	30	150	16	83	189	2.1	79.3
IMPERIAL BEACH, CITY OF	City Of Imperial Beach CS	1	150	0	150	0	100	103	0.9	145.9
LEMON GROVE, CITY OF	City Of Lemon Grove CS	1	60	30	0	50	0	124	0.8	0
Laguna Beach City	City Of Laguna Beach CS	2	20	10	0	50	0	102	1.9	0
Padre Dam Municipal Water District	Padre Dam CS	1	50	50	0	100	0	160	0.6	0
San Diego City	San Diego City CS	10	2,010	1,504	255	74	12	4,049.00	0.4	12.4
San Diego Cnty	County Of San Diego CS	1	300	50	250	16	83	0	0	0
South Coast County Water District	South Coast Water District CS	1	500	20	480	4	96	150	0.6	320
Vallecitos Water District	Meadowlark CS	1	10	10	0	100	0	265	0.3	0
Vista City	City Of Vista CS	2	29	29	0	100	0	151.5	1.3	0
Totals		32	4,117	2,413	1,385			5,442.50		

California Regional Water Quality Control Board

San Diego Region

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Attachment B-5a

Linda S. Adams
Secretary for Environmental Protection

Arnold Schwarzenegger
Governor

9174 Sky Park Court, Suite 100, San Diego, California 92123-4353
(858) 467-2952 • Fax (858) 571-6972
http:// www.waterboards.ca.gov/sandiego

March 25, 2009

In reply refer to:
Place ID#: 710562
Order Reg Measure ID# 329556
SWU:Ebecker

County of San Diego
Land Development Division
1600 Pacific Highway, Room 212
San Diego, CA 92101

Attn: Chandra L. Wallar
Deputy Chief Administrative Officer

SUBJECT: FINDING OF ADEQUACY FOR THE JANUARY 2, 2009 UPDATED COUNTYWIDE MODEL STANDARD URBAN STORMWATER MITIGATION PLAN (SUSMP) REQUIREMENTS FOR DEVELOPMENT APPLICATIONS

On July 24, 2008, the San Diego Municipal Storm Water Copermittees (Copermittees) submitted an updated Model SUSMP in accordance with Section D.1.d.(8)(b) of California Regional Water Quality Control Board, San Diego Region (Regional Board) Order No. R9-2007-0001 (MS4 Permit). The Model SUSMP defines the minimum Best Management Practices (BMPs) to be incorporated into the Copermittees' priority development projects. In a September 18, 2008 letter, the Regional Board provided comments on the Model SUSMP. The letter also conveyed National Resource Defense Council (NRDC) September 9, 2009 comments on the updated Model SUSMP for the Copermittees to consider and respond to.

The Copermittes resubmitted the Model SUSMP on January 2, 2009 with changes and responses to Regional Board and NRDC comments. The Regional Board has reviewed this updated Model SUSMP and concludes that the Copermittees have adequately addressed relevant comments and that the January 2, 2009 Model SUSMP meets the requirements of the MS4 Permit. Attached to this letter, is NRDC's letter dated February 23, 2009, regarding the January 2, 2009 Model SUSMP. NRDC's additional comments and suggested changes to the Model SUSMP are not reflected in the Model SUSMP, but should be considered by the Copermittees during update of the Copermittees' local SUSMPs.

Prior to March 25, 2010, each Copermittee shall update their local SUSMP to implement the updated requirements in accordance with the MS4 Permit Section D.1.d.(8)(c).

If you have any questions regarding the above, please contact Eric Becker by e-mail at ebecker@waterboards.ca.gov or by phone at (858) 492-1785.

Respectfully,

JOHN H. ROBERTUS
Executive Officer

Attachment: NRDC February 23, 2009 Letter

CC: National Resource Defense Council
1314 Second Street
Santa Monica, CA 90401
Attention: Bart Lounsbury

San Diego Municipal Storm Water Copermittees (Distribution List Attached)

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Paul Hartman
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February 23, 2009

Mr. John Robertus
Executive Officer
San Diego Regional Water Quality Control Board
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4340

Re: Incorporating a Numeric Performance Standard into the Model SUSMP for San Diego County

Dear Mr. Robertus:

The Natural Resources Defense Council and San Diego Coastkeeper have participated extensively in the 2006-2007 San Diego MS4 permitting process. Thereafter, we have commented on, and sponsored expert technical review of, subsequent proceedings required by the Permit to revise the Model SUSMP. Both before and after Permit adoption, NRDC and Coastkeeper have consistently raised concerns about the lack of clear standards for the implementation of post-construction stormwater management BMPs in general and low impact development ("LID") practices in particular. Unfortunately, we remain extremely concerned that the Model SUSMP, while overall a useful guidance document, fails to specify the necessary performance criteria to ensure that stormwater pollution is, in fact, reduced to the Clean Water Act's "maximum extent practicable" ("MEP") standard.

In January 2007, we submitted comments on the second revised Tentative Order and noted its problematic failure to include specific, numeric performance requirements. In February 2007, we petitioned the State Board to overturn the approval of the San Diego MS4 Permit ("Permit") in large part because of the aforementioned problem. We held our petition in abeyance, however, with the understanding that the Model SUSMP revision process would address our concerns. In April and September 2008, during the drafting of the Model SUSMP, we submitted letters to the County of San Diego and to the Regional Board reiterating the need for specific, numeric performance requirements. We believe, though, that the most recent draft of the Model SUSMP does not adequately set forth such requirements but that, with a few small revisions, it could be brought into line with the MEP standard and with other stormwater regulations around the country. We have detailed these revisions below and urge you to require the County to revise the Model SUSMP accordingly.

I. The Model SUSMP Must Compensate for the Lack of Clear Performance Standards in the Permit and Implement Its Mandate to Maximize LID by Requiring a Robust Numeric Performance Standard for Low Impact Development.

There is an emergent consensus nationwide that LID practices are the most effective stormwater management techniques, besides providing many other benefits, such as reducing the need for imported water, increasing property values, mitigating the urban heat island effect, and creating aesthetically pleasing landscapes. In California, the Ocean Protection Council, for instance, strongly endorsed LID last year by "resolv[ing] to promote the policy that new developments and redevelopments should be designed consistent with LID principles" because "LID is a practicable and superior approach ... to minimize and mitigate increases in runoff and runoff pollutants and the resulting impacts on downstream uses, coastal resources and communities."[1] EPA has also called upon Regional Boards across California to prioritize the implementation of LID, even "recommend[ing] that the [South Orange County draft] permit be revised to put more emphasis on LID [and to] require that LID be woven into the design of specified new development and redevelopment projects."[2] In other MS4 permit contexts, EPA has also specifically endorsed the use of metrics, particularly the EIA approach that NRDC advocated for the San Diego Permit.

It is becoming clear that without requiring the implementation of LID practices designed to satisfy feasible and clear metrics, stormwater permits cannot meet the Clean Water Act's "maximum extent practicable" ("MEP") standard for pollution reduction. Critically, the prioritization of LID practices is insufficient by itself to meet the MEP standard and *must* be paired with a measurable requirement for the implementation of LID. We outlined very similar concerns during the approval process for the South Orange County MS4 Permit, which was rejected by the Regional Board in part because it contained much of the same vague language as the San Diego Permit and Model SUSMP. We have attached our January 24, 2008, letter to reiterate the legal problems that arise from such language (these concerns are also summarized in Section II below).

Since its inception, the MS4 permitting program has been seriously hampered by a pervasive absence of numeric performance standards for the implementation of BMPs such as LID. For this reason, in December 2007, the State Water Resources Control Board commissioned a report which found that "[t]he important concept across all of [the] approaches [described in the report] is that the regulations established a

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[1] California Ocean Protection Council, *Resolution of the California Ocean Protection Council Regarding Low Impact Development* (May 15, 2008). We have enclosed a CD that includes all of the documents referenced in our letter.

[2] Environmental Protection Agency, Comments re Draft MS4 Permit for Southern Orange County (email from Eugene Bromley) (Jan. 24, 2008) (hereinafter "EPA South OC Comments").

performance requirement to limit the volume of stormwater discharges."[3] The report also noted that "[m]unicipal permits have the standard of Maximum Extent Practicable (MEP) which lends itself more naturally to specifying and enforcing a level of compliance for low impact development."[4] EPA has highlighted similar but more specific concerns, remarking that subjective and imprecise language (such as requiring "a portion" of a site to address LID, as in the Permit at D.1(d)(4)) is "vague" and that EPA recommends "more precise requirements."[5]

Various jurisdictions nationwide have begun adopting numeric performance standards for stormwater management, frequently pairing these with requirements to implement LID practices:

- **Pennsylvania:** Capture at least the first two inches of rainfall from all impervious surfaces and retain onsite (through reuse, evaporation, transpiration, and/or infiltration) at least the first one inch of runoff;[6]

- **Anacostia, Washington, D.C.:** Retain onsite the first one inch of rainfall and provide water quality treatment for rainfall up to the two-year storm volume;[7]

- **West Virginia:** Retain onsite the first one inch of rainfall from a 24-hour storm preceded by 48 hours of no measurable precipitation;[8]

- **Georgia:** Treat the runoff from 85% of the storms that occur in an average year (*i.e.*, provide treatment for the runoff that results from a rainfall depth of 1.2 inches);[9]

- **Central Coast, California (RWQCB, Phase II):** Limit effective impervious area ("EIA") at development projects to no more than 5% of total project area (interim criteria); establish an EIA limitation between 3% and 10% in local stormwater management plans (permanent criteria);[10]

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[3] State Water Resources Control Board, *A Review of Low Impact Development Policies: Removing Institutional Barriers to Adoption* at 23 (Dec. 2007) (emphasis added) (hereinafter "SWRCB LID Report").
[4] *Id.* at 4.
[5] EPA South OC Comments.
[6] Pennsylvania Stormwater Best Management Practices Manual, Chapter 3 at 7 (Dec. 30, 2006).
[7] *See* SWRCB LID Report at 20-21.
[8] State of West Virginia, NPDES Permit No. WV0116025 at 13-14.
[9] Georgia Stormwater Management Manual, Unified Stormwater Sizing Criteria at 1.3-1.
[10] Central Coast Regional Water Quality Control Board, Letter from Roger Briggs re Notification to Traditional, Small MS4s on Process for Enrolling under the State's General NPDES Permit for Storm Water Discharges (Feb. 15, 2008) (hereinafter "Central Coast Phase II Letter").

- **All Federal Buildings over 5,000 square feet** (under EPA's draft guidance for implementation of the Energy Independence and Security Act of 2007): Manage onsite (*i.e.*, prevent the offsite discharge of) the 95th percentile storm through infiltration, harvesting, and/or evapotranspiration.

For the reasons outlined above, it is imperative that the Model SUSMP require new development and redevelopment projects to implement LID practices designed in accordance with a clear performance requirement. As detailed below, we recommend that the Model SUSMP include a standard which requires onsite retention, with no surface discharge, of the rainfall from the 85th percentile storm. This approach is not only consistent with practice nationally and in California, but Dr. Richard Horner demonstrated its practicability in the San Diego region in technical analyses prepared prior to adoption of the Permit in 2007 (all of which are part of the administrative record).

This critical element, lacking in the Permit, has not been sufficiently addressed in the Model SUSMP, as we believe the Executive Officer and the Regional Board intended. Such clear regulatory requirements must be included and must be consistent with MEP and related requirements, as well as the mainstream of stormwater control across the country. Indeed, the Permit's requirements for such vague actions as "drain[ing] a portion of impervious areas ... into pervious areas" and "minimiz[ing] the impervious footprint of the project" with no specific numeric performance requirement beyond the SUSMP treatment control sizing criteria are not adequate or consistent with standard practice in the field, nor do they implement the Permit's fundamental requirement—added at the adoption hearing—to ***maximize*** LID. (Permit at D.1(d)(8).)

Unfortunately, the Model SUSMP does not clearly and unambiguously set forth a performance standard for LID, therefore failing to cure the problem with the Permit and failing to comply with the Regional Board's expectation and direction in 2007. As it stands, the Model SUSMP merely outlines a process for choosing and designing LID features and describes the SUSMP treatment control sizing criteria that function as a minimum requirement for stormwater treatment in California. While meeting the minimum SUSMP criteria would be a seriously deficient performance standard because stormwater requirements have advanced significantly since the establishment of these criteria, the Model SUSMP nonetheless allows waivers of these minimum sizing criteria for nebulously defined demonstrations of infeasibility. Requiring that projects simply meet the minimum requirements of the State Board's nine-year-old Order WQ 2000-11, and then allowing waivers of these minimum requirements, is a far cry from *maximizing* the implementation of LID, especially given the numerous more recent and more stringent examples (listed above) from elsewhere in the country. Currently, the Permit and the Model SUSMP stand as examples of the approach that EPA and others have criticized as inadequate. (Permit at D.1(d)(4)-(6).) In order to comply with the State Board's prescription that "[t]he important concept across all of [the] approaches [studied by the State Board] is that the regulations established a *performance requirement* to

limit the volume of stormwater discharges," the changes described in Section III are required.[11]

II. The Permit and the Model SUSMP Are Inconsistent with the Clean Water Act Because They Collectively Do Not Set Forth Legally Adequate BMPs to Implement LID.

The lack of clarity and specific requirements noted above is not only inconsistent with state and national practice, and therefore fails to comply with the MEP requirement, but it also violates the Clean Water Act because the vagueness of the LID provisions prevents them from constituting legally adequate BMPs and from allowing the Regional Board to understand what actions are required by the Permit. NRDC has previously addressed these and related issues in comments in 2008 on the proposed MS4 permit for South Orange County. We attach for your reference these comments and incorporate them herein, since they apply with equal force to this issue. By way of summary, however, BMPs that do not require a reasonably clear and specific performance standard fail to meet the legal definition, and practical function, of a "Best Management Practice." Particularly where, as here, BMPs are intended to serve in part or whole as effluent limits, this vagueness is unlawful and deeply undercuts the effectiveness of the Permit. Among other things, neither staff nor the Regional Board members themselves can understand the level of water quality control required by the Permit and the Model SUSMP now, since neither document contains clear and reasonably specific requirements for LID implementation.

Twenty years after the first adoption of MS4 permits—with water quality problems associated with urban runoff still a serious problem in San Diego—it is far past time for staff or the Regional Board to essentially guess about what the Permit requires or what actions will be taken in order to comply with its terms. We respectfully submit that the edits set forth below are required to cure these key problems and bring the Permit into line with standard practice in the field and applicable legal requirements.

III. The Model SUSMP Can Be Easily Revised to Include the Necessary Numeric Performance Standard and Accompanying Alternative Compliance Requirements.

The Model SUSMP already contains a useful outline of the process of designing stormwater management BMPs to incorporate LID features—it simply needs to establish a clear numeric performance standard that will require the implementation of LID practices to the MEP standard and also allow for alternative compliance where onsite compliance is technically infeasible. The approach that we recommend is consistent with other stormwater management programs across the country, as discussed above. To clarify the primacy of LID implementation and to establish a robust performance

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[11] State Water Resources Control Board, *A Review of Low Impact Development Policies: Removing Institutional Barriers to Adoption* at 23 (Dec. 2007) (emphasis added).

standard, we recommend that the following text be inserted in Chapter 2 after the introductory section on page 14.

Design Standards for Priority Development Projects

To implement the general requirements of Permit Provision D.1.d, the Copermittees have developed the following design standards and alternative compliance criteria for Priority Development Projects. These requirements shall be implemented and constitute requirements of the Permit.

- ***Onsite Volumetric Retention Requirement:*** *All Priority Development Projects must be designed to retain onsite, with no runoff, the volume of water that results from a 24-hour 85th percentile storm event (the "onsite retention volume") as determined from the County of San Diego's 85th Percentile Precipitation Isopluvial Map (rainfall depths vary from 0.55" to 1.55").*

- ***Prioritization of LID:*** *In designing stormwater management BMPs to accommodate the onsite retention volume, project applicants must first utilize LID features to meet the onsite volumetric retention requirement. If the implementation of all technically feasible LID features does not allow a project to retain the full onsite retention volume, project applicants may utilize other stormwater management BMPs to retain the remaining required volume onsite.*

- ***Alternative Compliance and Offsite Mitigation:*** *If exceptional site constraints render compliance with the onsite volumetric retention requirement technically infeasible, project applicants must implement all technically feasible retention features and treat any remaining surface discharge (up to the onsite retention volume) through the practices outlined in this Model SUSMP. When a Copermittee allows a project applicant to exercise this alternative compliance option, the project applicant must either*

  (1) construct an offsite mitigation project or

  (2) provide sufficient funds to the Copermittee for a public project

  that will retain a volume of stormwater (the "offsite retention volume") equivalent to the portion of the onsite retention volume that was not retained onsite times 1.5.[12]

[12] We recommend a ratio of 1:1.5 for the offsite retention volume. This is consistent with the other stormwater regulations mentioned above and with numerous other environmental mitigation programs around the country.

- *Timing of Offsite Mitigation Projects: Projects addressing the offsite mitigation volume, whether performed by the project applicant or by the Copermittee after collecting in-lieu funds, must be constructed and fully operational within 36 months of the final discretionary approval of the applicant's project by the Copermittee. Funding sufficient to address the offsite mitigation volume must be transferred to the Copermittee (for public offsite mitigation projects) or to an escrow account (for private offsite mitigation projects) within one month of final discretionary approval by the Copermittee. In addition, a specific offsite mitigation project must be identified, and funding allocated to that project, within 18 months of final discretionary approval by the Copermittee.*

To clarify the applicability of this section, the Model SUSMP's section discussing "Waivers from Numeric Sizing Criteria" on page 12 should be revised to reflect the requirement that all projects receiving waivers can only receive a "waiver" from the onsite retention requirement (and thus the section should be renamed "Waivers from the Onsite Volumetric Retention Requirement"), must still treat all surface discharge up to the design volume, and must construct—or provide funds for the construction of—an offsite project that will mitigate the deleterious effects of allowing onsite non-compliance by the project. These recommendations should rectify the shortcomings of the Permit itself and make the Model SUSMP and its requirements consistent with the MEP standard and with stormwater regulations in other locations around the U.S.

IV. Conclusion.

We appreciate the opportunity to comment on the Model SUSMP and the Copermittees' willingness to involve us in this process. We strongly urge you to require the revisions that we have recommended above, as they are necessary to address the legal inadequacies of the Permit by establishing a clear, numeric performance standard that requires the implementation of LID and allows for alternative compliance in situations of technical infeasibility.

Please feel free to contact us with any questions.

Sincerely,

David Beckman
Bart Lounsbury
Natural Resources Defense Council

Gabriel Sohmer
San Diego Coastkeeper

County ponies up for scaled-back water-monitoring plan by ADRIANE TILLMAN
http://www.sdnews.com/pages/full_story?article-County%20ponies%20up%20for%20scaled-back%20water-monitoring%20plan%20=&page_label=home&id=2228693-County+ponies+up+for+scaled-back+water-monitoring+plan&widget=push&instance=home_news&open=&

The cleanliness of beach water will continue to be monitored following the County Board of Supervisors' unanimous vote to pay for a scaled-down version of the program on March 24.

Supervisor Greg Cox urged the board to fork out $150,000 to monitor beach water from April 1 to Oct. 31 after the state cut off money to counties for testing due to the freezing of Prop. 13 funding. In 2000, voters had approved Prop. 13 to sell $1.97 billion in bonds for clean water purposes.

The county will only sample water at 19 shoreline sites weekly instead of the previous 57 sites, when the state spent $302,000 on the program. The county chose specific sites for continued testing where bacteria levels had exceeded state standards in the past as well as ones that are popular and used most often.

In Ocean Beach, the county will test at the San Diego River outlet. Along San Diego Bay, water will be monitored at Shelter Island and Tidelands Park (Coronado bayside). In La Jolla, the county will sample water at La Jolla Cove and Torrey Pines (Penasquitos Lagoon outlet).

Along Mission Bay, the county will test water for total coliform, fecal coliform and enterococci at six sites: Tecolote (playground watercraft area), Leisure Lagoon, Visitors Center (shoreline), De Anza Cove (swim area), Campland and Bonita Cove eastern shore. In Pacific Beach, water testing will continue at Tourmaline.

"Environmental health executives have analyzed the data and concluded with confidence that reduced testing will still meet the threshold required to protect the public health," Cox wrote in a March 16 letter to the board urging them to fund the program.

Once the state releases funding for the beach water monitoring, the county plans to re-evaluate the program to determine whether to return to testing 57 sites or continue the abridged version.

The county cannot accept all the responsibility for the beach water-monitoring program, Cox stated in his letter to the board.

He said the county must "engage the coastal cities, the Unified Port of San Diego and agencies that discharge wastewater in discussions leading to development of a formula for shared funding responsibility."

Cox also wrote that the county would not permanently pick up the slack for the state, and that it is not the county's business practice to "backfill programmatic funding eliminated by the State."

County Supervisor Pam Slater-Price had originally said the supervisors would not fund the program. However, she has since been reassured that the state would return the funding, pending the sale of the bond, after Cox discussed the issue with the State Water Resources Control Board in Sacramento.

"We don't see it as a backfill but more as a bridge loan in order to not miss a window of opportunity," Slater-Price said.

"Spring break is here, the weather is warming up and everyone is heading to the beach," she added,

California Regional Water Quality Control Board

San Diego Region

Attachment B-9

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March 5, 2009

CERTIFIED MAIL

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In reply refer to:
401PM:cclemente

Michael D. M^{c}Collum
M^{c}Collum Associates
10196 Clover Ranch Drive
Sacramento, CA 95829

Dear Mr. M^{c}Collum:

SUBJECT: Mitigation at the North County Habitat Bank, Carlsbad, California

The Regional Board's initial review of recent applications where mitigation was proposed at the North County Habitat Bank (Bank) prompted further investigation into how creation habitat was determined and the sale of mitigation credits from the Bank. This investigation resulted in a number of communications between multiple staff at the Regional Board, the Bank, and a number of resource agencies. To obtain a clear understanding of the bank's operation, the Regional Board conducted a site visit on October 15, 2008.

In follow up to this visit, a meeting was convened on January 15, 2009 with David Barker, Chiara Clemente, Jeremy Haas, Frank Melbourn, and Michael Porter of the Regional Board, and you, Mr. Mark Rohrlick of Westmark Development Corp., and Mr. Barry Jones of HELIX Environmental Planning Inc. The purpose of the meeting was to review the creation and sale of mitigation credits from the Bank in the following context:

1. Did "Creation", as defined by the federal definition used to satisfy 401 certification requirements, occur at the North County Habitat Bank?

2. How are "creation/restoration" and "enhancement" credits being determined, maintained, and sold at the bank?

The purpose of this letter is to summarize the Regional Board's findings with regards to the above, and clarify how the Board intends to proceed with applications proposing mitigation at the Bank.

Creation Credits

The majority of this Regional Board's existing certifications include the following defining criteria, consistent with the U.S. Army Corps' (prior to the federal Mitigation Rule):

> "For purposes of this certification, creation is defined as the creation of vegetated or unvegetated waters of the U.S. where they have never been documented or known to occur (e.g., conversion of nonnative grassland to freshwater marsh). Restoration is defined as the creation of waters of the U.S. where they previously occurred (e.g., removal of fill material to restore a drainage). Enhancement is defined as modifying existing waters of the U.S. to enhance functions and values (e.g., removal of exotic plant species from jurisdictional areas and replacing with native species)."

A preliminary delineation of the Bank site was conducted in December 2003 by W.L. Sward and Keli Balo of HELIX Environmental Planning Inc. Invasive species (predominantly pampas grass) were then removed from the site; the site was revegetated; and a follow-up delineation was conducted in May 2007 by HELIX biologists Stacy Nigro and assistant Phillip Tran to determine the difference in habitat.

Any habitat that was created, restored, or enhanced would be made available for purchase as either "creation/restoration" or "enhancement" credits. Habitat that originally contained one or two of the three criterion established for wetland delineations[1] (i.e. vegetation, hydrology, and soils), and that was converted to contain all three criterion, was made available for sale as "Enhancement" credits. According to discussions at the meeting, you reported 2.8 acres of wetland Enhancement credits were made available by the Bank's efforts. Habitat that originally contained none of the criterion, and was converted to meeting all three criterion, was defined by the Bank as wetland "Creation/Restoration". At the meeting you reported a total of 4.78 acres were made available for sale as such[2].

In consideration of the information available, the Regional Board has concluded that what the Bank refers to as "Creation/Restoration" credits could be considered suitable compensatory or punitive mitigation for permanent impacts to waters of the state, under specific conditions. Within the context of the 401 certification program, however, those specific conditions are generally dependent upon project-specific information that enables the Board to assess potential effects to water quality objectives within waters affected by proposed discharges.

The Board will continue to evaluate proposals to use the Bank's services on a case-by-case basis. The sale of habitat services should be based on the specifically identified

[1] Using methods defined in the 1987 USACE Wetland Delineation Manual and the 2006 (Interim) Arid West Supplement.

[2] Using USACE defining criteria. This number becomes 6.07 acres, if using CDFG defining criteria.

needs of the project proponent purchasing the services. Accordingly, it will be necessary for 401 certification applicants to: 1) clearly identify what services are being purchased (in terms of both acreage and type); 2) clearly identify what portion of those specific services are intended to mitigate for temporary or permanent impacts; and (3) receive approval from the Board for the proposed mitigation prior to purchasing credits from the Bank.

Sale of Credits

Meeting discussions also focused at length on how many Creation/Restoration and Enhancement credits are made available by the Bank and how they are sold.

According to the January 10, 2009 letter from Barry Jones, HELIX Environmental Inc. reported that the process followed at the Bank is that once "success criteria have been met, a 1:1 mitigation ratio is to be used for (impacts mitigated at) the Bank, regardless of the mitigation ratio required in the permits." The rationale provided for this was that, "typically, mitigation ratios of 3:1 are required to:

- Offset the temporal loss of habitats;
- Account for potential for reduced functions and values; and
- Account for potential for less than 100% successful implementation..."

As was discussed at the meeting and acknowledged in the letter from Mr. Jones, the Board can and oftentimes does require a higher mitigation ratio for reasons other than those cited above. It is not the Bank who should interpret the mitigation requirements set forth in a specific Regional Board 401 certification. For future projects where an applicant intends to use the Bank's services, 401 certifications will clearly state how specific mitigation can be satisfied with the purchase of Bank credits.

The heading portion of this letter includes a Regional Board code number noted after "In reply refer to:" In order to assist us in the processing of your correspondence please include this code number in the heading or subject line portion of all correspondence and reports to the Regional Board pertaining to this matter.

Any questions you have regarding this matter should be directed to Ms. Chiara Clemente, at cclemente@waterboards.ca.gov and 858-467-2359.

Respectfully,

MICHAEL P. McCANN
Assistant Executive Officer

JHR:dtb:cmc

cc:
Bill Orme, SWRCB
Eric Raffini, U.S. EPA
Barry Jones, HELIX Environmental Planning Inc.
Mark Rohrlick, Westmark Development Corp.
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