



City of Anaheim
DEPARTMENT OF PUBLIC WORKS

February 13, 2009

Gerard J. Thiebeault
Executive Officer
Santa Ana Regional Water Quality Control Board
3737 Main Street, Suite 500
Riverside, CA 92501

BY U.S. POST AND ELECTRONIC MAIL

Subject: SARWQCB Order No. R8-2008-0030, NPDES No. CAS618030 Waste Discharge Requirements for the County of Orange and the Incorporated Cities of Orange County Within the Santa Ana Region

Dear Mr. Thiebeault:

Thank you for this opportunity to comment on the November 10, 2008 draft MS4 NPDES Permit (the "Permit") for the County of Orange. The City of Anaheim recognizes that the Regional Boards across the State take different approaches to implementing waste discharge requirements and we appreciate the deliberative manner in which you and the Board are working with the cities, counties and other stakeholder interests to deliver meaningful Permits improve water quality and to comply with the law.

The City has reviewed the comment letter provided by the County of Orange, dated February 13, 2009, and supports their comments and agrees with the basis for their findings. Additionally, the City requests the following changes to the permit:

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1. The Economic Impacts of the New Permit Provisions are Substantial

The draft Permit states that "Each permittee shall secure the resources necessary to meet all requirements of this order." This provision has an increased significance as this 4th term permit comes at a time when State, County and City resources are dwindling at an alarming pace. All co-permittees are being forced to make difficult cutbacks. Critical public services, including emergency services (Police and Fire) are being carefully reviewed. Hiring freezes are in place at the City and employees at some agencies are losing their jobs. While these conditions may persist for years, regardless of the duration of the current economic downturn, all public funds should be spent responsibly in good times and bad. Therefore, while the City supports the goal of clean water, it is also very important to ensure that resources are focused on the most important and meaningful activities. The current draft of the permit – as detailed below – focuses substantial new resources on programs that may result in no measurable water quality improvements in the short or long term.

A. The Permit Should Be Reviewed for Economic Impacts and Should Focus on Direct Water Quality Benefits

The proposed Permit includes many new requirements which will obligate substantial resources in order to achieve compliance. These new costs County-wide, are estimated to be on the order of several millions of dollars, which in these times, equates to the potential loss of dozens of employment positions. The City is concerned that many of the new mandated activities are administrative and provide no measurable benefit to receiving waters.

With the publication of the CASQA Municipal Stormwater Program Effectiveness Assessment Guidance Manual (May 2007), there exists a well-recognized and reputable document to guide program implementation and Permit development. This document advocates elevating efforts (public resources) toward the highest "Outcome Level." The lowest Outcome Level is "Documenting Activities," while the highest is "Protecting Receiving Water Quality."

Many of the new administrative provisions of this proposed permit seem to support the lowest outcome level. Considering alternatives which would achieve higher level outcomes, the City requests that the Board take the following steps:

- Review the permit obligations in the context of the CASQA Municipal Stormwater Program Effectiveness Assessment Guidance Manual, and,
- Analyze alternatives to the current Permit requirements to identify activities which might achieve similar or even more substantial positive impacts at less cost.

B. Certain Permit Obligations Impose Undue Financial and Administrative Burdens

Specifically, the following Permit obligations seem to impose undue financial and administrative burdens on cities, without providing a measurable benefit to water quality:

- Administrative Paperwork Obligations. The proposed Permit includes extensive new paperwork obligations that significantly increase reporting obligations, not only the annual report, but at other times of the year. (e.g., quarterly reports on enforcement). Consistent with the need to focus on higher Outcome Levels, our limited public resources are seemingly better focused on tasks such as BMP installation and maintenance which may have a measurable impact on water quality. The City requests that the Board review the necessity of the increased reporting requirements, which, *de facto*, replaces other activities that provide a greater impact to environmental health.
- Commercial Inspections. The new mandatory ranking, inspection and reporting procedures for commercial facilities will require approximately 1,600 new inspections with the City of Anaheim alone. It is important to realize the burden on the City imposed by this Permit element is not simply the inspection. Each inspection requires pre-inspection coordination and post-inspection follow-up, database tracking and reporting and is effectively a "policing" system. Accordingly, the cost associated with this single permit provision is estimated to cost the taxpayers \$200,000 to \$400,000 annually. Moreover, City data shows that, given the breadth of the inspection scope, the majority of this effort will be focus on facilities that are unlikely to adversely affect water quality and are, in large part, conforming to existing water quality regulations. Therefore, the City believes that this requirement, even though it focuses on mid-range

unlikely to adversely affect water quality and are, in large part, conforming to existing water quality regulations. Therefore, the City believes that this requirement, even though it focuses on mid-range Outcome Levels, has very limited potential for actual water quality benefit. The City requests a cost-effective alternate approach of refocusing public education efforts toward the commercial businesses identified as targets in this Permit section.

- Tracking and Inspection of All Structural Treatment Controls. The requirement for the Cities to individually track and inspect every public and private treatment control BMP every other year is a cost that is substantial and unpredictable. Obtaining legal authority to enter private land to perform these inspections, doing the inspection, tracking and following up with each inspection creates an entire policing regime. The City recognizes and agrees that sizeable treatment controls do merit inspection. However, requiring inspection and tracking of every filter strip or landscape detention area (of which there are tens of thousands County-wide) does not seem to be a sound use of public funds. This is particularly true considering that Water Quality Management Plans require private property owners perform regular inspection and maintenance of these facilities. The costs of this element of the Program become staggering when one recognizes that the expanded WQMP mandate increases the number of structural controls necessary on individual sites.

Notwithstanding the mandates of the Porter Cologne Act, a consistent methodology to measure the economic impacts of water quality regulations on taxpayer resources and the public has yet to be developed. It is the City's hope that staff will share the economic analysis it has done (or will be doing) regarding the obligations in this Permit so that we can all ensure the obligations can be reasonably without an unjustified economic burden on our citizens.

2. The Effective Impervious Area Limitations Are Unreasonable Limitations on the Use of Land

The five percent Effective Impervious Area (EIA) limitations for new and significant redevelopment projects is problematic for several reasons. Putting aside the scientific discussion as to whether this specific stormwater attenuation

plan development and potentially precludes the development of important public and private projects for several reasons:

- Many infill and redevelopment projects simply do not have the geographic luxury of capturing the required volumes of water on site in swales or detention basins.
- The City of Anaheim has areas where extensive "infiltration" is neither advisable nor possible due to geologic conditions (e.g. landslide and slope instability issues onsite or adjacent to development, solid rock formations or clay lenses underlying development).
- It acts as a disincentive to maximize the use land in urbanized areas and transportations centers which is the goal of SB 375.
- The cost of retaining stormwater on site acts as substantial surcharge on public projects, including life safety, community and affordable housing projects that currently struggle to meet funding requirements.
- The requirement substantially devalues both private and publicly owned land where space for development is needed.

Specifically, this requirement would put an end to many redevelopment/affordable housing projects and would effectively prohibit the City from complying with the intent of the Regional Housing Needs Assessment and SB 375. For example, in 2004, the Anaheim Redevelopment Agency entered into an Agreement with a private developer to develop and operate a 7-acre mixed-use, urban infill project with 465 rental units, ground floor retail space, and a regional museum complex. This project created new housing and employment in an urban area that reduced/eliminated the need for additional vehicle trips. However, if this project were subject to the development constraints in the Proposed Order it would not be feasible due to the significant costs associated with onsite retention for a site with no setbacks or landscape. Further, trying to gain a discretionary "waiver" from the Regional Water Quality Control Board for these types of projects is not a practical solution to planning and economic development for Anaheim.

The City recognizes the need to consider hydromodification and Low Impact Development objectives, but believes this important goal should be tackled regionally, in addition to considering an onsite approach. The Permit confuses

its encouragement of regional solutions with its prohibition of treatment controls in the Waters of the U.S.

Finally, the requirement for Public Works projects as small as 5,000 sf to comply with new development requirements (including incorporating treatment controls) is unnecessarily burdensome. The cutoff perhaps was meant to be 1 acre (and is much more reasonable), in keeping with the trigger for required coverage under the General Construction Permit, therefore the City recommends that this is the cutoff, rather than 5,000 sf.

3. The Annual Characterization of Trash Is Unnecessary

The requirement to "characterize trash, determine its main source(s) and develop and implement appropriate BMPS to control trash in urban runoff" is a vague obligation and potentially costly task. The requirement to perform this exercise annually is unnecessarily burdensome and the changes year over will likely be minimal. Changes observed will more likely reflect daily changes rather than showing actual trends. The City of Anaheim has over 1,200 curb-miles of roadways that are swept on a weekly basis. It collects over 100 tons of trash and debris per week. "Characterizing" this trash to determine its "main source" is an endeavor that would require the hiring of specialized consultants and would have little, if any benefits to water quality. The City recommends a more practical solution to achieve the same goal of requiring a one-time characterization of trash by the County to obtain data for various types of land uses.

4. There Is No Legal Authority to Search and Seize Items from Private Property in the Absence of Legal Justification

Permit section VI, Paragraph 2 states: *"The permittees' ordinance must include adequate legal authority to enter, inspect and gather evidence (pictures, videos, samples, documents, etc.) from industrial, construction and commercial establishments."*

The City requests clarification of this item. If the intent of the provision is to require Cities to create legal authority to search private property, and seize items therein in the absence of landowner consent or a Court Order, this cannot likely be achieved without offending a number of State laws and Constitutional protections. Additionally, in many cases, the State, rather than the City, has

therein in the absence of landowner consent or a Court Order, this cannot likely be achieved without offending a number of State laws and Constitutional protections. Additionally, in many cases, the State, rather than the City, has authority to inspect/search private property through the General Industrial Permit and other similar mechanisms.

5. Requiring Residents to Implement Best Management Practices is Problematic

The mandate to force residents, who typically do not fall within the regulatory purview of the Clean Water Act, to implement best management practices at their homes is a difficult and costly Permit provision. This provision could result in the City taking an individual to court for – for example – not using a “bio-degradable soap” when washing their car (even though this is not a “prohibited discharge”). This would likely erode public support for the NPDES program and could create a “backlash” of opposition to the NPDES program as a whole. The City requests a suitable alternative to this requirement such as refocusing the public education component of the Permit to target homeowners rather than mandate enforcement.

6. Coordination between the State and Permittees on Regulatory Activities Would Benefit All Involved

Currently, the State database indicates that currently there are 126 State-issued General Industrial Stormwater Permits within the City of Anaheim. These permits require the creation of a unique Stormwater Pollution Prevention Plan (SWPPP) involving high level controls – including stormwater sampling – by the permitted industries. Since this is a State Permit, the City neither regulates, reviews nor implements the SWPPP. The same holds true for the General Construction Permit. Similarly, the State oversees activities (Development, Construction and to a lesser degree Operations) at School sites, and Caltrans (a State Agency) operates under a separate individual permit, as do a select few large private businesses. While findings 26 – 30 of the current Draft Permit identify these facts it does not go far enough to identify the coordination and oversight of these permits by the State to prevent overlap and avoid redundancy of effort.

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adoption. The Cities provide extensive volumes of information to the RWQCB, however, virtually no information is sent in the other direction. Therefore the City is requesting that all NPDES Permits, Inspection Reports (Industrial, Construction and others), Notices of Violation, and other related correspondence be copied to the County and Cities that might be affected. This would help prevent redundant inspections (a waste of city and business time and creates a feel of double jeopardy for businesses) and would foster better cooperation between the Permittees and the RWQCB

The state of our collective economic affairs is a prominent reminder of the need to focus public dollars on maximizing public benefit. The City remains strongly committed to ensuring water quality is a top priority in Anaheim and appreciates your guidance in making this a realistic and achievable goal.

Very truly yours,

A handwritten signature in black ink, appearing to read "Natalie Meeks". The signature is fluid and cursive, with a large initial "N" and a long, sweeping underline.

Natalie Meeks,
Director of Public Works