



Public Works Department

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City of Irvine, One Civic Center Plaza, P.O. Box 19575, Irvine, California 92623-9575 (949) 724-6000

April 9, 2009

Gerard J. Thibeault, Executive Officer  
California Regional Water Quality Control Board  
3737 Main Street, Suite 500  
Riverside, CA 92501-3348

Dear Mr. Thibeault:

The City of Irvine would like to express our appreciation for the opportunity to comment on the Second Draft of Order No. R8-2008-0030 (NPDES No. CAS618030). We have especially appreciated the opportunity to meet with you, your staff, and other stakeholders to discuss the low impact development (LID) and hydromodification portions of the draft order.

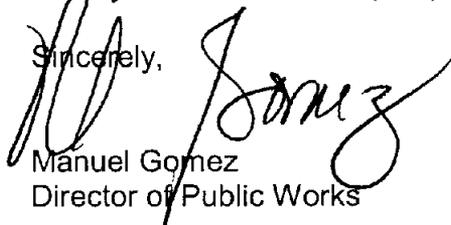
We have reviewed the County of Orange comment letter of April 9, 2009 and fully support the comments submitted by the County. Since the City and County needed to prepare comments concurrently, our comments may overlap, to some extent, with those submitted by the County. As we have indicated, it will be difficult for co-permittees to continue to grow the stormwater program considering the economic environment. It is essential that a permit is adopted resulting in continuing water quality improvements while recognizing economic constraints.

We generally support the Second Draft including efforts to reduce runoff to the maximum extent practicable. We have concerns and requests for clarification outlined on the attachment. Our most significant concern is the proposed burdensome inspection and reporting requirements which will not result in tangible improvements to water quality.

We appreciate the Regional Board's consideration of our comments and their interest in developing a permit that will continue to improve water quality while meeting the needs of the co-permittees, residents, and other stakeholders in Orange County.

If you have any questions or need additional information, please contact Mike Loving, Water Quality Administrator, at (949) 724-6315.

Sincerely,



Manuel Gomez  
Director of Public Works

Attachment

cc: Sean Joyce, City Manager  
Sharon Landers, Assistant City Manager  
Doug Williford, Community Development Director  
Mike Loving, Water Quality Administrator

- 1) Sections X.2 and X.3 require inspections for all commercial facilities. Based on the Second Draft, 10% of commercial sites must be prioritized as 'high' and inspected once a year; 40% must be prioritized as 'medium' and inspected once every two years; and the remaining 50% must be prioritized as 'low' and inspected once every permit cycle. This would put a tremendous burden on larger cities at a time of dwindling resources. For example, this requirement would result in 985 additional inspections per year for the City of Irvine at an increased annual cost of \$279,700, and result in no discernable improvement to water quality. The required time for inspection is 3,545 hours per year, which is equivalent to 2.3 full time positions.

We would like to propose the permittees use the prioritization scheme as outlined in the Second Draft but only carry make inspections on 'high' priority sites as is the case with the current MS4 permit. This should address the Regional Board's concern about some permittees not performing commercial inspections.

Additionally, Sections X.3 and X.5 require photographic documentation for all aspects of each commercial facility inspection whether or not a violation exists. This is different than the requirement for industrial facility inspection found in section IX.3 which only requires photographic documentation when there is a water quality violation for industrial facility.

The City of Irvine proposes to only require photographic documentation when there is a violation. This would minimize issues relating to trade-secrets and other legal issues resulting from taking pictures without offering any valid reason to the facility representative. It will also reduce the burden of having to file and cross reference a huge amount of data.

- 2) Section XII.A.7: Clarify that timing for update of project approval process is the same as for update of CEQA documents set forth in Section XII.A.6 (at time of DAMP finalization and no more than 24 months from permit adoption).
- 3) Section XII.B.1 and XII.C.1: We request the reference to "WQMP" to expressly refer to the adoption of a revised "model" WQMP so it is, in turn, clear that:
  - a. under Section XII.C., LID requirements do not apply to development of conceptual or project WQMPs approved prior to 12 months after permit adoption, which is when the approval of the revised model WQMP is proposed to occur;
  - b. under Section XII.D., hydromodification control requirements do not apply to the development of conceptual or project WQMPs approved prior to 12 months after permit adoption, which is when the approval of the revised model WQMP is proposed to occur;
  - c. under Section XII.J, grandfathered projects are those receiving WQMP approval before approval 90 days after the approval of a revised model WQMP and within the period no more than 15 months after permit adoption.
  - d. as a practical matter, permittees and stakeholders have at least 12 months when the revised WQMP must be adopted (and maybe 15 months if an approved conceptual or project WQMP is in place), to put a Watershed Master Plan into place under Section XII.D.5 that provides for hydromodification control on a regional basis and maps sensitive waters, in order to avoid a requirement to implement site-by-site hydromodification controls that meet one of the conditions in Section XII.D.2 (time of concentration control, infiltration of full runoff volume of 2 year storm event). Since conditions in Section XII.D.2 may be infeasible to meet onsite for certain projects (e.g., those with high density/small parcel development plans (infill and transit oriented development), high groundwater,

pollutant plumes, clay soils, etc.), development of the regional hydromodification control plan will be critical to feasibility of individual development project compliance with hydromodification control plans.

- 4) Section XII.B.5.(a): Clarify that structural infiltration BMPs need to meet a minimum requirement that they should not increase seepage or exfiltration of contaminated groundwater that causes or contributes to an exceedance of surface water quality objectives.
- 5) Section X.II.D.2.(b): We request that this section be revised so that it does not prevent waters of the U.S. that are stabilized, hardened and improved from being conveyance channels that are *stabilized* and therefore *not* subject to hydrologic conditions of concern. Due to the implementation of ecologically friendly stabilization techniques in recent years, many conveyance channels deploy stabilization improvements that incorporate earthen channel improvements and vegetated stabilization techniques, resulting in the potential to characterize many conveyance channels as waters of the United States. Nevertheless, the conveyance channels are stabilized, and do not present hydrologic conditions of concern, so should not be characterized as sensitive waters simply due to their jurisdictional nature.
- 6) Section XII.I.5 requires 50% of sites with treatment control BMPs to be inspected prior to the rainy season with all treatment control BMPs to be inspected within a two year period. This means 50% of the sites with treatment control BMPs must be inspected on an annual basis during the dry season between May 1 and September 30. Since the inventory will grow every year, this inspection burden will grow as well.

The City of Irvine would like to propose the permittees inspect 25% of the sites with treatment control BMPs with all the treatment control BMPs per year to be inspected within a four year period. In addition, we request the entire reporting period, from July 1 to June 30, to conduct inspections instead of limiting inspections during the dry period, from May 1 to September 30. This would allow additional time for permittees to update inventory information for all existing sites with treatment control BMPs and conduct inspections.

- 7) Item H. of Section XII requires the permittees to establish a mechanism, not only to track treatment control BMPs, but also to ensure appropriate easements and ownerships are properly recorded in public records at the County and/or the City and the information is conveyed to all appropriate parties when there is a change in project or site ownership.

The City of Irvine proposes to leave recordation requirements to the discretion of the permittees for the following reasons: 1) the County Recorder is already recording easements and ownerships information. Recordation at the City will duplicate this effort; 2) the City routinely accesses easement and ownership information from the County Recorder's office for water quality and code enforcement purposes; 3) the City maintains all approved project WQMPs on file for reference purposes including enforcement and periodic inspections; and 4) the Owner's certification page in the project WQMP clearly states that "Once the undersigned transfers its interest in the property, its successors-in-interest shall bear the aforementioned responsibility to implement and amend the WQMP." With these, the City has the means to obtain current owner information and legal authority to enforce requirements in the project WQMP.

- 8) The Second Draft requires the permittees to perform certain tasks within a certain time after adoption of this permit. For example, "*in the first annual report following adoption of this permit,*" or "*within six months of adoption of this order.*" We are concerned that: 1) there will not be sufficient time to meet some of these requirements within six months or less following adoption of the permit; and 2) most of the permittees complete their budgets for the upcoming fiscal year many months prior to the beginning of the fiscal year on July 1. If there are permit requirements, for example, for completing a task within six months of the proposed April 24 adoption of the fourth term permit, the permittees will not have had an opportunity to include funding in their budgets to comply with the requirement until July of 2010. Therefore, we request the minimum time for completing the various tasks/deliverables outlined in the fourth term permit should be in sync with the permittees' ability to budget for them.