

State of California
California Regional Water Quality Control Board
Santa Ana Region

October 29, 2010

STAFF REPORT

ITEM: 7

SUBJECT: Amendment of Order No. R8-2009-0030 - Tentative Order No. R8-2010-0062

DISCUSSION:

Tentative Order No. R8-2010-0062 amends Waste Discharge Requirements for Areawide Urban Storm Water Runoff for the County of Orange, Orange County Flood Control District and the Incorporated Cities of Orange County within the Santa Ana Region, Order No. R8-2009-0030, NPDES No. CAS 618030. This amendment is only for the limited purpose of extending the deadlines for submission of certain documents described below.

The proposed order extends the deadlines for updating and approval of the Water Quality Management Plan and other related documents by six months (the deadline for preparation of watershed maps is extended by twelve months for reasons explained in the findings) to allow collaboration between the three municipalities within this region in implementing their storm water programs, thereby reducing costs, and providing a uniform set of requirements for the municipalities, as well as for the businesses and citizens of these three counties.

RECOMMENDATION:

Adopt Order No. R8-2010-0062, as presented.

In addition to the permittees, comments were solicited from the stakeholders on the Orange County MS4 electronic mailing list.

State of California
California Regional Water Quality Control Board
Santa Ana Region

Order No. R8-2010-0062

Amending Order No. R8-2009-0030, NPDES No. CAS 618030

The California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), finds that:

1. On May 22, 2009, the Board adopted Order No. R8-2009-0030, NPDES No. CAS 618030, prescribing Waste Discharge Requirements for Areawide Urban Storm Water Runoff for the County of Orange, Orange County Flood Control District and the incorporated cities of Orange County within the Santa Ana Region.
2. On January 29, 2010, the Board adopted Orders No. R8-2010-0033 and R8-2010-0036, prescribing Waste Discharge Requirements for Areawide Urban Storm Water Runoff for the areas of Riverside County and San Bernardino County, respectively, within the Santa Ana Region.
3. While these three Orders address discharges from three distinct municipal separate storm sewer systems (MS4) and there are specific characteristics of these three areas that require different permit language, the intent is that these permits be as similar as possible to provide a uniform set of requirements throughout the Region, with respect to storm water discharges. This commonality will allow collaboration between the municipalities in implementing their storm water programs, thereby reducing costs, and provide a uniform set of requirements for the municipalities in these three areas, as well as for the business and citizens of these municipalities.
4. There are sections in each of the three MS4 permits that are designed to address the effects of pollutant loads that result from new development and significant redevelopment. Those sections require the preparation and submission of an updated Model Water Quality Management Plan (WQMP) and associated documents by each of the counties. These Model WQMPs will describe the Best Management Practices (BMPs) that developers will need to implement for new development and significant redevelopment.
5. Order No. R8-2009-0030 requires that within 12 months of adoption of the Order, the permittees update the Orange County Model WQMP to incorporate low impact development (LID) principles and other appropriate requirements and submit the updated Model WQMP to the Executive Officer for approval. If the Executive Officer has not approved the Model WQMP within 18 months of permit adoption, the project proponents will have to conduct individual analyses of feasibility of LID BMPs for their projects and those analyses finding infeasibility will have to be submitted to the Executive Officer 30 days prior to municipal approval.
6. The Orange County MS4 permittees submitted an updated Model WQMP, Technical Guidance Document and other supplemental documents to the Executive Officer on May 24, 2010, within the 12 months of permit adoption, as required by the permit.

The documents have been reviewed by Board staff and direction has been provided for further improvements of the documents. Once Board staff is satisfied that the documents meet permit requirements, they will be open to a 30-day public comment period, followed by consideration for approval by the Board at a public hearing.

7. Orders No. R8-2010-0033 and R8-2010-0036 each requires that within 18 months of adoption of the Order, the Riverside and San Bernardino County permittees, respectively, update the Model WQMPs for each respective County to incorporate LID principles and other appropriate requirements and submit the updated Model WQMPs to the Executive Officer for approval.
8. The Orange County permittees have requested for an extension of the deadlines specified in their permit for updating the WQMP and other related documents in order to allow effective collaboration between the three counties in preparing their respective Model WQMPs and associated documents. Board staff has reviewed this request and finds that by providing the additional time requested by Orange County (in most cases, a six months extension of the deadlines specified in the permit), all permittees in the three counties could benefit through the collaborative process. The permit is being reopened for the limited purpose of extending the deadlines for submission and approval of the updated WQMP and associated documents.
9. The Orange County permittees must prepare watershed maps identifying hydromodification concerns including the identification of areas where infiltration is possible and appropriate. These maps cannot be prepared until the criteria used to evaluate the appropriateness of infiltration have been approved by the Board. Board staff has reviewed the request that the deadline for submittal of the watershed maps be extended by one year, to May 22, 2011 and finds the request reasonable.
10. Title 40 of the Code of Federal Regulations, section 122.62, provides that Order No. R8-2009-0030 may be modified if new information that was not available at the time of permit issuance becomes available, and that the information would have justified different permit conditions at the time of permit issuance. (40 CFR § 122.62, subd. (a)(2).) In this case, the agreement to collectively develop strategies to address the LID provisions in the various MS4 permits occurred after the Board had adopted Order No. R8-2009-0030. Additionally, when the Board adopted Order No. R8-2009-0030, conventional economic wisdom failed to recognize both the nature and the depth of the economic recession. Should the Board have been aware of this information at the time of the adoption of Order No. R8-2009-0030, it would have allowed the Orange County permittees additional time to coordinate its efforts with the permittees within Riverside and San Bernardino Counties in an effort to reduce costs and share implementation strategies.
11. In accordance with Water Code Section 13389, amending wastewater discharge requirements for this discharge is exempt from those provisions of the California Environmental Quality Act contained in Chapter 3 (commencing with Section 21100), Division 13 of the Public Resources Code.
12. The Board has notified the discharger and other interested agencies and persons of its intent to amend waste discharge requirements for the discharge and has provided them with an opportunity to submit their written views and recommendations.

13. The Board, in a public meeting, heard and considered all comments pertaining to the discharge.

IT IS HERBY ORDERED that Order No. R8-2009-0030 be amended as follows:

1. Order No. R8-2009-0030, page 47 of 93, revise Section XII.A.2 to read:
 2. Within 12 months of adoption of this order, the principal permittee, in collaboration with the co-permittees, shall develop a guidance document for the preparation of conceptual or preliminary WQMPs to more effectively ensure that water quality protection, including LID principles, is considered in the earliest phases of a project. Within 90 days of approval of the guidance document, each permittee shall revise its LIP to be consistent with the guidance. The permittees are encouraged to require submission of a conceptual WQMP as early in the planning process as possible.
2. Order No. R8-2009-0030, page 52 of 93, revise Section XII.B.6 to read:
 6. By November 22, 2010, the principal permittee shall develop recommendations for streamlining regulatory agency approval of regional treatment control BMPs. The recommendations should include information needed to be submitted to the Board for consideration of regional treatment control BMPs. At a minimum, it should include: BMP location; type and effectiveness in removing pollutants of concern; projects tributary to the regional treatment system; engineering design details; funding sources for construction, operation and maintenance; and parties responsible for monitoring effectiveness, operation and maintenance.
3. Order No. R8-2009-0030, page 53 of 93, revise Section XII.C.1 to read:
 1. Within 12 months of adoption of this order, the permittees shall update the model WQMP to incorporate LID principles (as per Section XII.C) and to address the impact of urbanization on downstream hydrology (as per Section XII.D) and a copy of the updated model WQMP shall be submitted for review and approval by the Executive Officer⁵⁵. As provided in Section XII.J, 90 days after approval of the revised model WQMP, priority development projects shall implement LID principles described in this section, Section XII.C. To the extent that the Executive Officer has not approved the feasibility criteria by May 22, 2011, as provided in Section XII.E.1, the infeasibility of implementing LID BMPs shall be determined through project specific analyses, each of which shall be submitted to the Executive Officer, 30 days prior to permittee approval.
4. Order No. R8-2009-0030, page 58 of 93, revise Section XII.D.5, paragraph 3 to read:
 5. The maps and a model plan for one watershed shall be prepared by May 22, 2011. The model Plan should specify hydromodification management standards for each sub-watershed and provide assessment tools. In the

preparation of the model Plan, the permittees are encouraged to use currently available information from other sources such as: (1) Orange County Flood Control Master Plan; (2) Irvine Ranch Water District's Natural Treatment System Master Plan; (3) Orange County Watershed Plans; (4) Nutrient and Selenium Management Program; (5) TMDL and 303(d) Listing information from the U.S. EPA and/or the Board, and (6) and water districts.

6. This amendment shall become effective ten days after the date of its adoption, provided the Regional Administrator of the United States Environmental Protection Agency has no objections. If the Regional Administrator objects to its issuance, this Order shall not become effective until such objection is withdrawn.
7. All other terms and conditions of Order No. R8-2009-0030 shall remain unchanged and in full force and effect.

I, Kurt V. Berchtold, Executive Officer, do hereby certify that the forgoing is a full, true, and correct copy of an order adopted by the California Regional Water Quality Control Board, Santa Ana Region, on October 29, 2010.

Kurt V. Berchtold, Executive Officer