



CITY OF ORANGE

CITY MANAGER

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June 20, 2014

Mr. Kurt Berchtold
Executive Officer
California Regional Water Quality Control Board
Santa Ana Region
3737 Main Street, Suite 500
Riverside, CA 92501-3348

Subject: Draft MS4 NPDES Permit Order No. R8-2014-0002

Dear Mr. Berchtold:

The City of Orange appreciates the opportunity to comment on the proposed MS4 Permit for Orange County Draft Order No. R8-2014-0002. As a co-permittee under the Draft Order, the City will be heavily impacted by the Order's proposed requirements and would like to take the opportunity to comment on a few issues of concern. The County of Orange has provided an in depth analysis and proposed recommendations for the Draft Order and the City supports those comments by reference. A short summary of issues of concern is provided in the following paragraphs and a complete write-up is provided in the attachment to this letter.

In the Draft Order, the model programs in the Drainage Area Management Plan (DAMP), Local Implementation Plan (LIP), Model WQMP, Technical Guidance Document and other documents developed and adopted by the co-permittees in previous years are not referenced and instead individual requirements are listed for each storm water program element. The Technical Report states that those documents have been decoupled from the Draft Order to provide greater flexibility to the co-permittees and their programs.

While decoupling existing program documents from the Draft Order might provide some flexibility, it is nearly impossible to condense those documents into a new Order. This is particularly problematic in Section XII of the New Development /Significant Redevelopment program where documents covering over 400 pages are distilled down to 19 pages. In the course of distilling those documents, certain information is bound to be missed, which is the concern.

The co-permittee approved documents cover much more information than what is contained in the Draft Order and provide guidance to assist in evaluating projects and complying with the existing Order. Given that this program is also

Letter to Kurt Berchtold
Comments Draft MS4 Permit R8-2014-0002
June 20, 2014

fairly new, consideration should be given to allowing more time to assess how the New Development program is working under the existing Order before new requirements are imposed.

In other sections the Draft Order becomes too prescriptive where instead of identifying the desired goals or results, the manner of compliance is prescribed (what needs to be included in enforcement programs, how to discipline employees who violate standard operating procedures, where training records need to be kept, and many more) contrary to Section 13360 of Porter-Cologne.

In the New Development/Significant Redevelopment section certain provisions interfere with City land development application processes. Provision XII.A.6 requires cities to not accept applications as complete until a report of waste discharge has been filed with the Regional Board when there is a discharge of dredge or fill material to waters of the U.S.

The discharge of dredge or fill material to waters of the U.S. is not a permit that is issued by cities but by the US Army Corp of Engineers under a 404 permit and the companion 401 water quality certification is issued by regional boards. To require cities to not accept land planning applications as complete until a report of waste discharge is submitted to the Regional Board could potentially delay project review and action by cities for an indefinite time period because the timing and submittal of the discharge permit applications to federal and state agencies could be months or years.

Another issue of significant importance is the requirement to designate all projects exposed to storm water (XII.M.1), where co-permittees have approval authority, as Priority or Nonpriority projects (XII.B.2). This provision has the potential to bring issuance of over the counter building permits to a virtual halt and significantly increase the cost of projects previously deemed inconsequential to the storm water program. Projects such as roof repair, patio covers, solar panels, block walls, small residential additions and others would now be required to have Nonpriority WQMPs prepared by licensed professionals (XII.M.5).

These and other issues are discussed in the attachment. Questions regarding these comments may be directed to Gene Estrada at 714-744-5547.

Sincerely,



John W. Sibley
City Manager

cc: Joe DeFrancesco, Public Works Director
Frank Sun, Deputy Director/City Engineer
Chris Crompton, Manager, Public Works Environmental Resources
Adam Fischer, Santa Ana Region Water Quality Control Board

Comments Draft Order No. R8-2014- 0002

XII. NEW DEVELOPMENT (INCLUDING SIGNIFICANT REDEVELOPMENT)

Comment 1: This section specifies the requirements for new development and significant redevelopment that co-permittees are intended to comply with and has purposely ignored the reference to existing co-permittee technical documents such as Model WQMP and Technical Guidance Documents. Those documents consisting of over 400 pages were prepared and approved by the regional board executive officer over the course of two years and define the existing new development/significant redevelopment program. To distill the documents down to 19 pages will almost certainly result in omission of program elements that are currently used by co-permittees to review and approve projects. Among these omissions is to not fully recognize how hydrological conditions of concern may be complied with by reducing peak design flow rates to existing flow rates. Another example is not recognizing that meeting the 80% treatment performance can be achieved by infiltrating in shorter or longer periods than the 48 hours specified in the order based on soil infiltration rates and corresponding BMP sizes. And there are many other examples too long to list.

While it cannot be expected that the order cover the contents of the co-permittee approved documents, it does point out the deficiency with not referencing existing documents.

Recommendation: Refer back to approved co-permittee documents such as the Model WQMP and Technical Guidance Document for implementation of new development/significant redevelopment program. Where changes are proposed explicit reasons should be provided for the reasoning.

Comment 2: This section of the draft order does not recognize alternative compliance programs such as water quality credits and in lieu fee programs that were previously allowed in Order R8-2009-0030 and existing co-permittee documents when the available suite of BMPs cannot be used onsite or through a regional BMP.

Water quality credits can be beneficial by encouraging development of sites that might otherwise be unattractive for development such as brown fields, high density development and other uses specified in the previous permit. These credits should also be made available directly to the project by allowing a reduction in the treatment capacity required due to the credits applicable to the project instead of allowing a reduction in treatment only if onsite BMPs cannot treat the required design volumes or discharges, which effectively the credits useless.

Recommendation: Include language to allow alternative compliance programs such as water quality credits and other in lieu programs as previously allowed by Order R8-2009-0030 with water quality credits allowed to be taken directly from the required treatment requirements.

Order Specific Comments

- A.6 This paragraph requires co-permittees to not accept applications as complete until a report of waste discharge has been filed with the Regional Board when there is a discharge of dredge or fill material to waters of the U.S.

It is not clear why this requirement is being imposed on the co-permittees. Co-permittees are involved in accepting and processing applications for land development. Co-permittees can also impose conditions or restrictions on projects to meet local regulations. The discharge of dredge or fill material to waters of the U.S. requires submittal of applications to federal and state agencies (404 permit and 401 certification) where co-permittees do not have any jurisdiction. The timing of these applications is also very different from the submittal of an initial land development application (months or years) and this requirement would greatly interfere and delay a co-permittees right to accept land development applications. Co-permittees could impose project conditions requiring other permits to be obtained prior to the issuance of city land development permits but the order should not interfere with a co-permittee's land application process.

Recommendation: Delete requirement to not accept applications as complete until a report of waste discharge has been filed with the Regional Board when there is a discharge of dredge or fill material to waters of the U.S. Alternatively, reword provision to require a project condition to obtain a permit from the Regional Board.

- B.2 The paragraph requires co-permittees to classify all projects over which they have approval authority as Priority or Nonpriority.

The provision in this paragraph along with the definition provided in paragraph M.1 for Nonpriority projects that include projects exposed to storm water or are sources of urban runoff is broad and will result in co-permittee expenditure of resources and costs that are unnecessary. An unambiguous reading of these provisions would require projects such as reroofs, patio covers, solar panel roof installations, block walls, swimming pools and spas and other projects typically issued by building departments over the counter to prepare WQMPs. This will not only cause project delays but will also prove costly adding potentially thousands of dollars to projects because applicants must now hire a licensed professional (civil engineer, landscape architect, provision M.5) to prepare the WQMP. This requirement is clearly impracticable and unreasonable.

For illustrative purposes, Orange conducted a review of the number of building permits issued between July 1, 2013 and April 30, 2014. In those ten months 1927 permits were issued. Of those permits, 579 permits (200 reroof, 250 solar panel installations, 40 patio covers, 89 other (residential additions, block walls, etc.) about 30%, could be subject to WQMPs as Nonpriority projects since they would be exposed to storm water. As a basis for comparison, the City has reported the approval of 23 Nonpriority projects during the last 4 years in its

annual NPDES reports. That is an average of 6 Nonpriority projects approved per year compared to almost 700 that might require WQMPs annually.

Clearly, this is not a reasonable requirement nor does it make sense. Implementation of these provisions will bring issuance of over the counter permits to a halt and have significant economic consequences for each project and would require cities to add a significant number of personnel to review and process the project WQMPs.

Recommendation: delete this requirement or revise to be consistent with the Model WQMP, which clearly defines Nonpriority projects as those projects requiring discretionary co-permittee approval that cannot be classified as Priority WQMPs.

- L.1.d The paragraph requires the Executive Officer to approve waivers for projects that cannot employ any structural treatment controls BMPs.

The current permit only requires the Executive Officer to be notified 30 days prior to the issuance of a waiver by the co-permittees along with justification. Final approval of the waiver is left to the co-permittees unless the Executive Officer rejects the waiver within the 30 days.

Revising the language to require the Executive Officer to approve the waiver may result in project approval delays if the EO fails to act within 30 days. The current language in the existing Order was approved after lengthy discussions during Regional Board hearings of the last permit. Unless, there is substantial evidence that waivers are being issued indiscriminately by co-permittees, the existing language in the existing permit should remain or require action within 30 days.

Recommendation: Delete this provision or require E.O approval in 30 days.

- M. 5 The paragraph requires a registered engineer or licensed landscape architect to prepare and sign a Nonpriority plans.

This requirement may make sense where structural BMPs implemented require technical knowledge possessed by design professionals. It does not make sense in Nonpriority plans that do not require this technical knowledge and will add thousands of dollars to a project's costs that are unnecessary. For example, hiring a licensed professional for a simple Nonpriority plan that must be approved by a city such as a small restaurant outdoor patio dining expansion where only a canopy may be used makes no sense where someone other than a licensed professional can prepare a simple plan.

Recommendation: Revise language to require a licensed professional to prepare a Nonpriority plan only where structural BMPs are implemented.

XIV. MUNICIPAL FACILITIES/ACTIVITIES

- C. The paragraph requires 80% annual inspection of flood management and storm water conveyance systems.

As written, this provision requires annual inspection of 80% of its storm water conveyance facilities, which include storm drains. Adding storm drains to the annual inspection requirement would be a huge drain on co-permittee resources and added costs that are unnecessary. Storm drains were required to be inspected during the first term permit in 1990 primarily for the identification of illicit connections. This requirement was removed during the second term permit when it was found that illicit connections were not a problem countywide. Subsequent permits required inspection of storm drains on an as needed basis based on local knowledge. The previous MS4 permit, Order No. R8-2009-0030 Section XIV.11, required cleaning and maintenance of 80% of drainage facilities (catch basins, storm drain inlets and open channels) on an annual basis. These drainage facilities are easily visible from the surface and do not require confined space permits or video equipment. To require inspection of storm drains is problematic and expensive without evidence that storm drains are creating a problem.

Recommendation: Revise “storm water conveyance” to “drainage facilities” and define as catch basins, storm drain inlets and open channels.