



May 8, 2009

*Via electronic mail*

Ms. Carole H. Beswick and Members of the Board  
Santa Ana Regional Water Quality Control Board  
3737 Main Street, Suite 500  
Riverside, CA 92501-3348

***Re: Draft NPDES Stormwater Permit for the County of Orange, Tentative Order No. R8-2009-0030***

Dear Chair Beswick and Members of the Board:

We write on behalf of the Natural Resources Defense Council (“NRDC”) and Orange County Coastkeeper (“Coastkeeper”). We have reviewed the Fourth Draft of Tentative Order No. R8-2009-0030, NPDES Permit No. CAS618030—the May 1, 2009 draft of the Waste Discharge Requirements for the County of Orange, Orange County Flood Control District and the Incorporated Cities of Orange County within the Santa Ana Region Areawide Urban Storm Water Runoff NPDES Permit. We appreciate the opportunity to submit the following comments on Sections XII.C.1. and 2., as permitted by the May 1, 2009 transmittal letter from Division Chief Adackapara.

General Comment

As an initial matter, we wish to correct the impression that this language reflects stakeholder consensus, an opinion expressed by a number of board members during the last hearing, including Chair Beswick. It is true that the stakeholders engaged in a good faith effort which in some respects productively narrowed differences. It is, however, equally true that key disagreements remain: notably, Coastkeeper and NRDC continue to believe that good policy and law require a standard that *retains* on-site the design storm whenever possible. This does *not* equate to a “no discharge” requirement, because the design storm is relatively small. It does mean, however, that Orange County would get the benefit of a no pollution discharge standard whenever that could be feasibly implemented—a critical step forward, particularly because the water retained would be infiltrated or otherwise reused. Such an approach mirrors similar ones now being implemented or considered in locations as

diverse as Washington D.C., Philadelphia, West Virginia—and, through new federal buildings requirements, everywhere in the United States.

Infiltration or reuse not only implements the MEP requirement (and others) contained in the Clean Water Act, it is also inarguably wise policy in drought-stricken California. Governor Schwarzenegger recently declared a state of emergency in California due to severe drought. The major Southern California water supplier will cut water deliveries across the region this summer by ten percent, the first such cut since the drought of the early 1990s.<sup>1</sup> Notably, the Governor's Proclamation orders public water agencies to essentially "find" more water through a variety of activities, including "...efforts to protect water quality or water supply."<sup>2</sup> As such, a standard that requires retention of the design storm with no runoff when possible is directly responsive to the Governor.

Thus, the Board has a decision to make: should it require the maximum practicable approach to reducing pollution in a County with many impaired watersheds or something less? The Board should clearly understand as it deliberates that Sections XII.C.1. and 2. currently reflect a proposal to do something less.

### Specific Comments

#### *Alternative Compliance*

The additional phrase in Section XII.C.2. requiring alternative compliance if the onsite management requirements of the paragraph are not met should be clarified as follows:

Permit:

Projects that do not comply with this requirement shall meet the requirements established in section XII.E. for alternative or in-lieu compliance.

Permit with clarification:

Projects that do not comply with this requirement shall meet the requirements established in section XII.E. for alternative or in-lieu compliance, which shall assure at least equivalent environmental performance.

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<sup>1</sup> Bettina Boxall, *Southern California water agency to cut supplies by 10%*, L.A. Times, April 15, 2009, available at, <http://www.latimes.com/news/local/la-me-mwd-water15-2009apr15,0,4326528.story>.

<sup>2</sup> Office of the Governor of the State of California, Gov. Schwarzenegger Takes Action to Address California's Water Shortage, February 27, 2009, available at, <http://gov.ca.gov/index.php?/print-version/press-release/11556/>.

*Remove References to Bio-Filtration*

Sections XII.C.1. and 2., now modified with language proposed by U.S. EPA, are an improvement. However, staff modified that language to allow use of bio-filtration to meet the basic LID performance standard. We disagree. For all of the reasons previously discussed in our comment letters and expert reports, and for the reasons set forth in the technical supporting literature we have included in the record, NRDC and Coastkeeper strongly believe that the words “or bio-filter” should be deleted from the third line and “or bio-filtered” should be deleted from the eighth line of Section XII.C.2.

We appreciate the footnotes in this Section that attempt to circumscribe the use of bio-filtration and require “properly engineered and maintained” systems. However, as Coastkeeper Executive Director Garry Brown testified, experience shows that this is easier said than actually implemented. As such, the change to EPA’s requested language to allow for bio-filtration serves as an “out” that will minimize environmental performance. In contrast to objectively clear requirements to “infiltrate, harvest and reuse, or evapotranspire, “bio-filter” is a subjective term open to interpretation—as is the requirement to “properly” engineer or maintain the systems.

Indeed, while we oppose the allowance for bio-filtration as part of the main LID standard, we believe that if this language remains over our objections, clarifying language in footnotes 56 and 57 should close the loopholes we have identified.<sup>3</sup> There is consensus amongst the parties, including the BIA and CICWQ, that bio-filtration LID BMPs can be subject to abuse and therefore must be built and maintained to strong and clear requirements. For example, CICWQ states in its February 13, 2009 letter to this Board that “we recommend that hard feasibility criteria should be specified in the model WQMP/DAMP upon its renewal—such that developers should not be able to bypass implementation of appropriate LID BMPs.”<sup>4</sup> These same parties emphasized their willingness to subject LID bio-filtration BMPs to clear design and maintenance requirements during last month’s hearing.

Therefore, if the Board does not delete references to bio-filtration in Section XII.C.2., it should at minimum, make the following clarifications:

1. Footnotes 56 and 57 should state, in addition to stipulating that bio-filtration only be considered if infiltration, harvesting and reuse, and evapotranspiration are not feasible, as follows:

"LID bio-filtration BMPs shall be designed to accommodate the design flow at a surface loading rate no greater than 5 inches per hour and shall have a total volume, including pore spaces and prefilter detention volume, no less

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<sup>3</sup> We reserve our rights to challenge this provision irrespective of any such clarifications.

<sup>4</sup> Correspondence from Mark Grey to Michael Adackapara, February 13, 2009, at 6.

than the runoff volume generated by the design storm depth times 0.75. Runoff from impervious areas also may be dispersed to pervious landscaped areas in a ratio not to exceed 2 parts impervious area to one part pervious landscaped area. Pervious landscaped areas must be designed to pond and infiltrate runoff produced by the design storm depth."

2. All other references to "treatment" which have not been corrected to refer to "bio-treatment" in Section XII should be modified. There are four such references in Section XII.C.7. to "treatment areas" and "or treat" in 7.a. through 7.d.

### Conclusion

We urge the Regional Board to improve the Tentative Order in the ways specified prior to its adoption. We appreciate staff's efforts to date during the adoption process and would be pleased to respond to any questions they may have about our comments.

Sincerely,



David S. Beckman  
Bart Lounsbury  
Noah Garrison  
Natural Resources Defense Council



Garry Brown  
Orange County Coastkeeper