



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**REGION IX**  
**75 Hawthorne Street**  
**San Francisco, CA 94105-3901**

June 18, 2009

Mr. Ben Neill  
Northern Watershed Protection Unit  
San Diego Regional Water Quality Control Board  
9174 Sky Park Court, Suite 100  
San Diego, CA 92123

Re: Draft MS4 Permit for South Orange County

Dear Mr. Neill:

The following are EPA Region 9's comments on the March 13, 2009 Tentative Draft Permit for the South Orange County Municipal Separate Storm Sewer System (MS4), as amended by the "Draft Updates to LID Language" dated June 8, 2009. EPA most recently commented on the March 13 draft permit in a letter to James Smith dated May 14, 2009. These comments are intended to supplement our May 14 comments.

First, we would like to express our support for one aspect of the March 13, 2009 Tentative Draft Permit which was not covered by our May 14 letter. We recognize that section B, regarding Non-Stormwater Discharges removes "landscape irrigation, irrigation water, and lawn watering" from the listed categories of non-prohibited non-stormwater discharges. We note that the draft Fact Sheet identifies discharges from these categories to be substantial sources of pollutants. We agree that it is valid for the Regional Board to remove these sources from the list of non-prohibited non-stormwater discharges.

We are encouraged by the revisions made to the draft permit's Low Impact Development (LID) provisions in the June 8 update. We have been supportive of the Santa Ana Regional Board's Orange County MS4 permit, which was adopted on May 24, 2009. The LID provisions included in the June 8 update are generally consistent with the Santa Ana Regional Board's permit. We also appreciate that the June 8 update addresses the comments pertaining to LID in our May 14 letter.

We have the following specific comments on the June 8 update.

Section F.1.d requires the submittal of an updated model SUSMP within two years of permit adoption. We note that in other permits, including the May 24, 2009 Santa Ana Regional Board permit for Orange County, similar plans must be submitted within one year of permit issuance.

Section F.1.d.4.c.ii – The updated LID language includes the term “biofiltration.” Although this term is commonly used, as a general matter, its exact meaning is unclear. For example, in some circumstances, distinctions have not been made between infiltration and biofiltration. Conceptually, we believe that a well designed and operated biofiltration system can be consistent with LID principles by reducing flow volumes and protecting water quality. However, without a clear definition of biofiltration, there is the potential for the use of approaches that are contrary to LID. This section of the draft permit takes a step in the right direction by providing a total volume requirement for an acceptable biofilter. We would be interested in conferring further with you to improve the permit’s definition of biofiltration.

Lastly, we’d like to refer to our May 14 comment letter’s mention of the permit’s provisions regarding the incorporation of Total Maximum Daily Loads (TMDLs). We continue to believe that the draft permit’s TMDL provisions should be clarified, and would be glad to consult with you on this issue.

Thank you for the productive work you’ve done to improve this permit. If you’d like to discuss these comments, please contact John Tinger at (415) 972-3518, or Eugene Bromley at (415) 972-3510.

Sincerely,

A handwritten signature in black ink, appearing to read "Douglas E. Eberhardt". The signature is fluid and cursive, with a large initial "D" and "E".

Douglas E. Eberhardt, Chief  
NPDES Permits Office