

**Review of Draft Order No.
R8-2015-0001:
Orange County Municipal
Separate Storm Sewer
System Permit**

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Santa Ana Regional Water Quality Control Board

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Topics:

- Timeline of the development process.
- Areas of greatest attention to date.
- How key issues are being addressed in this Draft.

Development Timeline

| | |
|-------------------|--|
| October 2013 | Report of Waste Discharge received |
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Areas of Greatest Attention

- Receiving Waters Limitations Language (Section IV)
- TMDLs (Section XVIII and Appendices A-H)
- Municipal inspection programs (Sections VIII, IX, and X)
- New Development/Significant Redevelopment (Section XII)
- Economic Analysis (Technical Report)

Receiving Water Limitations and TMDLs

Sections IV and XVIII and Appendices A-H

Receiving Waters Limitations and TMDLs

- Both establish water quality standards and waste load allocations as effluent limitations.
- Failure to meet effluent limitations could subject Co-permittees to enforcement action.
- Permit should provide a pathway to come back into compliance.
 - Non-compliance triggers a response in the Co-permittees' program.

Receiving Waters Limitations and TMDLs

- First step: establish process for Co-permittees to identify and report compliance/exceedances of effluent limits.
 - Relies on water quality monitoring, analysis and reporting cycles required in Monitoring and Reporting Program.
 - Cycles' frequency are to be determined in a new Water Quality Monitoring Plan; will vary by pollutant
 - Frequency is affected by TMDLs; must be as short as practical; otherwise, must not exceed once every 5 years.

Receiving Waters Limitations and TMDLs

- Second step: establish process for Co-permittees to come into compliance with the permit.
 - WQS: develop compliance plan
 - WLA: request a Time Schedule Order or develop compliance plan
 - Either process is interchangeable where the WQS and WLA are for the same or closely-related pollutant.

Receiving Waters Limitations and TMDLs

- For water quality standards, an exceedance triggers the preparation of a compliance plan.
- For waste load allocations, the trigger and process depend on the status of the deadlines for the TMDL.

Receiving Waters Limitations and TMDLs

| | | Status of TMDL Deadline | |
|------------------------------------|---------------|-------------------------|---|
| | | Passed | Pending |
| Results of Monitoring and Analysis | No Exceedance | No New Action | No New Action |
| | Exceedance | TSO | new compliance plan/certify existing plan |

- Co-permittees may preemptively request a TSO, prepare a compliance plan, or have an existing plan approved by the Executive Officer as a compliance plan.

Quality Controls on Content of Compliance Plans or TSO Requests

- **Issues:**
 - plans may lack substance,
 - contain little new or useful information,
 - may be designed to avoid or postpone commitments to new BMPs or improvements to existing BMPs,
 - based on unstated assumptions or implied conclusions (e.g. insufficient information to justify any new commitments),
 - lots of paper but no significant advancement of the program towards improving water quality.
- **Implication:** the one-time cost of producing a plan is less than indefinite recurring costs of new commitments to BMPs.

Quality Controls on Content of Compliance Plans or TSO Requests

Compliance Plans

- Require expressed conceptual pollutant process models
- Minimum content requirements
- Require expressed commitments to new BMPs or modifications to existing BMPs (including time schedules)
- Reasonable assurance analysis to justify commitments
- Require an adaptive management process (iterative process)
- Public review of the plans (including models) and Executive Officer approval
- Allow changes subject to Executive Officer approval

Time Schedule Orders

- Require expressed conceptual pollutant process models
- Require “detailed time schedule of specific actions”
- Require Board approval → public review
- Content requirements are otherwise identical to compliance plans

Quality Controls on Content of Compliance Plans or TSO Requests

- “reasonable assurance analysis”
 - Construct originates from TMDL program
 - Some general requirements in permit requirements
 - Not fully defined in this Order; guidance is being developed by LARWQCB staff
 - Guidance includes blanket requirement for modeling
 - may not be necessary to support Co-permittees’ proposed strategies; required if needed in Draft Permit

Why this approach?

- Receiving waters limitation approach is dictated by State Board Order 99-05 and other precedential orders.
 - Precedential orders reaffirmed in the recent draft order on the LA MS₄ Permit.
- TMDL approach allows Co-permittees to initiate preparation of TSOs or compliance plans based on:
 - actual exceedances OR
 - risk of exceeding WLAs.
- Allows pollutants to be prioritized based on threat to water quality.

Municipal Inspection Programs

Sections VIII, IX, and X

Municipal Inspection Programs

- Requirements to inspect certain commercial, industrial, and construction sites.
- Number of inspections is dictated by a combination of subjective and objective requirements.
 - All sites are ranked “high”, “medium” and “low” priority.
 - Inspection frequencies are assigned to each rank.

Municipal Inspection Programs

- Required under Federal regulations
- Deterrent value
- Educational interaction
- Community feedback for other storm water programs
- Opportunity to fix tangible threats to water quality

Municipal Inspection Programs

- Co-permittees have requested reductions in their inspection burden of between 40 and 50% based on reported “high levels of compliance” (78-89%) since 2008-2009 reporting period.
 - Board staff questions the validity of the reported performance metric.
 - Using the success of a program to justify dramatic cuts does not logically follow.

Municipal Inspection Programs

- Board staff is not categorically opposed to reducing the inspection requirements; basis of any reduction needs to be sound.
- Cuts should be allowed to occur without harming the effectiveness of the program.
- Proposed reductions:
 - Adjusted the required distribution of commercial sites to a Pareto distribution (80-20 Rule): 16% decrease
 - Reduced the inspection frequencies for high-priority construction sites from 3 to 2 per season: 16% decrease
 - Inspect construction sites with 2+ week duration: unknown decrease
 - Allow inspections from vehicle (when appropriate): reduced level of effort

Municipal Inspection Programs

- Proposed cuts are significant; not likely to harm the effectiveness of the inspection programs.
- Draft Permit allows a Co-permittee to propose an alternative priority distribution and schedule for commercial sites during the permit term.

New Development and Significant Redevelopment

Section XII

New Development and Significant Redevelopment

- Draft Permit distills essential elements of the 2011 Water Quality Management Plan and Technical Guidance Document
 - Makes them permit requirements.
 - No more incorporation by reference.
 - Content can be altered within the Permit's parameters.
 - Purpose: promote flexibility in the WQMP-approval process.

New Development and Significant Redevelopment

- **Comments:**

- Risk of missing important elements
- Risk of technical errors during translation
- Incorporation by reference is easier
- Will require document changes and re-approvals; effective date may be difficult to meet

New Development and Significant Redevelopment

- Risks can be mitigated through public review.
 - Second round of public comments is occurring.
- Value of the flexibility outweighs the risks.
- Reviewed by Orange County staff and the authors of the 2011 MWQMP/TGD → changes have been made

New Development and Significant Redevelopment

- Scope of non-priority projects was altered.
 - Scope of non-priority projects is overly-inclusive
- A sizing factor of 1.5 was added for biotreatment facilities.
 - sizing factor is not sufficiently-supported

New Development and Significant Redevelopment

- Non-priority projects
 - Broad category of projects;
 - scope varies depending on scope of individual Co-permittees' permitting programs;
 - many projects may have little/no impact on water quality
- Permit directs each Co-permittee to identify non-priority projects that require source control and site design BMPs.

New Development and Significant Redevelopment

- 1.5 sizing factor for bio-treatment structural treatment control BMPs
 - Increased sizing is expected to make bio-treatment facilities perform similar to retention facilities
 - Based on a study performed for Ventura County as part of their MS4 Permit
 - Supported by USEPA
- 1.5 sizing factor is sufficiently-supported by available information
 - Permit allows Co-permittees to estimate an alternative factor

New Development and Significant Redevelopment

- Runoff fund was eliminated
 - Lack of use/insufficient incentive
- Water quality credit system was eliminated
 - Consists of a 30% reduction in design capture volume for LID projects
 - No evidence that system was effective in promoting LID
 - Unnecessary compromise with water quality.
- Off-site retrofit option added to BMP selection hierarchy at urging of USEPA.

Economic Analysis

Technical Report

Economic Analysis

- Economic Analysis follows the analysis in Region 9's MS4 Permit.
- Included out of an abundance of caution.
- Economic considerations are part of California Water Code Section 13241:
 - Lists factors to be considered when establishing water quality objectives
 - Do not apply when adopting NPDES permits

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Questions?