

CRWQCB - REGION 8	
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February 13, 2009

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

**SUBJECT: COMMENT LETTER – DRAFT ORDER NO. R8-2008-0030 NPDES
 NO. CAS618030 (P.W. File No 1101.2)**

Dear Mr. Thibeault:

The City of Tustin appreciates the opportunity to provide comments on the Santa Ana Regional Water Quality Control Board's Draft Order No. R8-2008-0030, as distributed in November 2008. The draft Tentative Order is indeed reflective of the recommendations made in the Report of Waste Discharge (ROWD), submitted by the Principal Permittee and Co-Permittees of North Orange County. However, the City of Tustin has a few concerns with the current draft. In addition to our concurrence with the comment letter submitted by the County of Orange, the City of Tustin would like to submit these additional comments for your consideration.

Comment #1: The potential for increased administrative burden from reporting requirements.

The City of Tustin echoes the County's comments regarding the increasing administrative burden on Co-Permittees with the new requirements in the draft Tentative Order. Like other Co-Permittees, over the years fiscal expenditures on the City's Storm Water NPDES program has steadily increased. Coupled with the current economic climate, state-wide budget cuts and hiring freezes, the increase in administrative requirements proposed by the draft Tentative Order may place a prohibitive strain on Cities to meet compliance objectives or compromise the goal of improving water quality.

The information submittals required in Section IX.6 and X.5, in particular, may prove to be a resource intensive endeavor. During the past fiscal year, the City invested significant funds and resources in the development of an electronic database to track and record information for the New Development Program, Existing Development Program, Construction Program, ID/IC Program, and the Municipal Program. To incorporate and maintain the additional functions outlined in the draft Tentative Order of those databases may prove to be resource intensive. Furthermore, to require Co-Permittees to provide their databases to the Regional Board may prove to be logistically difficult, as each Co-Permittee may be relying upon different software programs (or proprietary software), which may or may not be compatible with Regional Board systems. To convert such systems for compatibility may require significant costs to the Co-Permittees. The City therefore suggests that a spreadsheet with the information requested be submitted annually instead of the database itself.

Comment #2: The addition of commercial facility categories for the commercial inspection program.

In Section X.1 of the draft Tentative Order, eleven (11) new categories of commercial facilities are subject to municipal inspections. As stated in the County's comments, no justification is provided by the Findings of the Tentative Order that support these eleven (11) commercial categories as posing a significant water quality threat to the MS4, thereby warranting their listing.

The City recognizes the importance of commercial inspections to the storm water program. This program has for the last several years provided an excellent opportunity for public outreach, and business owners/operators have benefited from this face-to-face interaction with City staff. However, with the City facing budget reductions and a reduced staff, the City will have a difficult time meeting the inspection requirements as presented in the draft Tentative Order. A sound basis for the inclusion of these eleven (11) new commercial categories should be established prior to their inclusion into the draft Tentative Order in light of these economic conditions.

Comment #3: Applying minimum percentages for high, medium, and low priority commercial facilities.

The new requirement to have 10% of commercial sites ranked "high", 40% ranked "medium", and the rest of the commercial inventory ranked low, as stated in Section X.2 of the draft Tentative Order appears arbitrary. The Findings do not provide any basis for these minimum criteria. The process of ranking commercial facilities should be based solely on their water quality threat. If a facility is ranked "low" based on the listed factors evaluated, it should be deemed as such. Furthermore, setting this minimum percentage penalizes Co-Permittees with a low population of commercial facilities with "high" pollution potential by imposing unwarranted inspections. This would further strain that City's resources. The City of Tustin suggests that the Tentative Order provide criteria for the proposed ranking.

Comment #4: The Residential Program proposed in Section XI.

The City agrees with the sentiments expressed in the County's comments regarding the proposed Residential Program in the draft Tentative Order. The obligation to require residents to implement BMPs to mitigate polluted storm water runoff discharges is contrary to the Public Education and Outreach program, which strives to engender environmental stewardship and to affect the public through behavior change. The City supports a Residential Program component to the draft Tentative Order, but recommends the program be driven or measured through behavior change and awareness, and not through requirements for BMP implementation.

Comment #5: LID requirements for 5% Effective Impervious Area (EIA) are not justified in the Proposed Permit and may discourage infill and redevelopment opportunities.

The City of Tustin had strong concerns with the 5% EIA requirements as stated in the first version of the draft Permit. The 5% EIA requirements as currently written inappropriately takes a watershed assessment tool and applies it to site-specific projects. Justification for this application is not provided and does not ensure the protection of water quality but significantly encroaches upon the municipality's land use discretion authority. The City recognizes this requirement may be appropriate for new master planned communities, but is not as appropriate for a City such as Tustin which is largely built out. For the City of Tustin, there is a significantly higher potential for higher density in-fill or redevelopment projects that can be developed in a much more sustainable way that reduces the carbon footprint of the site. Encouraging

sustainable redevelopment within the City is an important objective of the City and is consistent with other land use regulations such as AB 375. EIA requirements on high-density developments may not be feasible or appropriate in certain situations and may discourage redevelopment projects.

However, the City of Tustin has been encouraged by the efforts of the Principle Permittee staff, the Santa Ana Regional Board Staff, and local NGOs to sit down and develop an alternative approach. The watershed approach currently being developed by all parties appears to address the concerns of the City. The City is encouraged that the parties will continue to develop an alternative plan after this first draft comment deadline.

Consistent with the working group noted above, the City of Tustin strongly supports technically equivalent performance standards other than the EIA percentage (3-5%) for implementing LID BMPs. The City also wants to make note that the proposed changes to land development would require a period of time for the Permittees to develop technical resources and capacity to implement them. At a minimum, there should be at least a 12-month period after permit adoption before any new obligations take effect.

Comment #6: The source of selenium is a non-point source and should not be subject to the NPDES Permit.

Selenium is a naturally occurring element in the environment and occurs in the MS4 system by way of groundwater seepage or rising groundwater. In order to regulate selenium as a discharge as stated in the Tentative Order, it would need to originate from a point source and not the natural background. Since Selenium does originate from the natural background, it should be regulated as a non-point source under a load allocation which is defined as "the portion of a TMDL's pollution load allocated to a non-point source, storm water source for which an NPDES permit is not required, atmospheric deposition, groundwater, or background source." (See 40 C.F.R. Section 1302(f)).

The City of Tustin appreciates the opportunity to comment on this tentative order. The City looks forward to working with the staff of the Santa Ana Regional Board and of the County of Orange in implementing this fourth term permit. If you have any questions, please feel free to contact Mr. Alex Waite at (714) 573-3305.

Sincerely,



Tim D. Serlet, P. E.
Director of Public Works/City Engineer

- c: Douglas S. Stack, Assistant Public Works Director
- Doug Anderson, Transportation and Development Services Manager
- Dana Kasdan, Engineering Services Manager
- Alex Waite, Environmental Compliance Specialist