



# CITY OF YORBA LINDA

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February 11, 2009

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

CRWQCB - REGION 8	
MES	

FEB 13 2009


**Subject: Comment Letter – Draft Order No. R8-2008-0030 NPDES No. CAS618030**

Dear Mr. Thibeault:

We appreciate the opportunity to provide comments on the Santa Ana Regional 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 Copermittees of North Orange County. However, there are several concerns that the City of Yorba Linda would like to emphasize with the new requirements proposed by the draft Tentative Order, in particular, where costs to implement such requirements would be prohibitive to meet substantial compliance with the draft Tentative Order. In addition to our concurrence with comment letter submitted by the County of Orange, the City of Yorba Linda would like to submit these additional comments for your consideration.

**Comment #1: Increased administrative burden from reporting requirements.**

The City of Yorba Linda echoes the County's comments regarding the increasing administrative burden on Copermittees with the new requirements in the draft Tentative Order. Like other Copermittees over the years, fiscal expenditure on the City's Storm Water NPDES program has steadily increased. Over a 4 year period, it has increased approximately 13.5 percent. Coupled with the current economic climate, the lack of development fees to supplement City budgets along with 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 money 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 functions outlined in the draft Tentative Order to those databases may prove to be resource intensive. Furthermore, to require Copermittees provide their databases to the Regional Board may prove to be logistically difficult, as each Copermittee may be relying upon different software programs (or proprietary software), which may or may not be compatible to Regional Board systems. To convert such systems for compatibility may require significant costs to the permittee.

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

In Section X.1 of the draft Tentative Order, 11 new categories of commercial facilities are subject to municipal inspections. No justification is provided by the Findings of the Tentative Order that support these 11 commercial categories as posing a significant water quality threat to the MS4, thereby warranting their listing. The City currently has 228 commercial facilities in its inventory, with 2 dedicated Authorized Inspectors to perform industrial/commercial inspections in addition to their primary code enforcement duties. To add 11 new categories of facilities to inspect, without any justification demonstrating them as significant non-point source polluters, will place a significant and unwarranted strain on City resources for an unknown water quality benefit, if any.

The City recognizes the importance of commercial inspections to the Storm Water Program. The program, since its inception, has been an excellent tool for public outreach and education. As with other Copermittees, the City regularly trains its staff/Authorized Inspectors on municipal inspections of commercial facilities per the requirements of the current term MS4 Permit. Authorized inspectors are, therefore, equipped with the skills to adequately identify problematic commercial facilities during their daily field activities. When such facilities are inspected and determined as a water quality threat, they are added to the commercial inventory. Facilities are routinely added to the commercial program, as well as the industrial program, in such a manner. Moreover, the City also targets its industrial/commercial districts for a more focused effort of monitoring and inspection, rather than relying solely on commercial classification of businesses. Based on the City's experience, a large number of commercial and industrial facilities are misclassified as facilities subject to the Existing Development inspection program on their business license applications and are discovered as not subject to the program upon inspection. For these reasons, arbitrarily adding 11 new facility categories to the commercial program are, in our opinion, unnecessary and fiscally burdensome. Until such categories are determined to pose significant water quality threats, they should not be included in the draft Tentative Order.

**Comment #3: Applying minimum percentages for high, medium, and low priority commercial facilities trivializes the prioritization process.**

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 X.2 of the draft tentative order is unfounded. The Findings do not provide any basis for these minimum criteria. By doing so, it trivializes the process of ranking commercial facilities, which 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 Copermittees with a low population of commercial facilities with "high" pollution potential by imposing unwarranted inspections. This would further strain that City's resources. This requirement should be removed from the Tentative Order. Instead, the City of Yorba Linda suggests that the draft Tentative Order provide criteria for the proposed ranking of facilities.

**Comment #4: The Residential Program proposed in Section XI is redundant and conflicts with the Public Education/Outreach approach established in the current MS4 permit term.**

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 are not justified in the Proposed Permit and may discourage infill and redevelopment opportunities.**

The City supports the Principal Permittee's comments on the 5% EIA requirements in the draft Permit. In addition, the City would like to reiterate that the 5% EIA requirements 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 Yorba Linda where it is largely built out. For the City of Yorba Linda, 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 Yorba Linda 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 that the City had. 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 Yorba Linda 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.

Sincerely,



Steven K. Harris  
Community Development Director

Cc: William R. Kelly, Interim City Manager  
Howard Weldon, Sr. Community Preservation Officer / NPDES Coordinator