



# CITY OF ORANGE

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## PUBLIC WORKS DEPARTMENT

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May 8, 2009

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

Subject: Fourth Draft Permit Version Dated May 1, 2009 for the Renewal of Waste Discharge Requirements for the County of Orange, Orange County Flood Control District and Incorporated Cities of Orange County, Tentative Draft Order R8-2008-0030, NPDES No. CAS618030, Areawide Urban Storm Water Runoff

Dear Mr. Thibeault:

The City of Orange would like to take the opportunity to comment on the revised fourth draft permit's language to Section XII.C.1 and C.2. The City has great concerns with the proposed changes and concurs with the County of Orange's analysis and recommendations. As with other municipalities, we were greatly disappointed at the April 24<sup>th</sup> meeting to find that changes to the implementation language in the LID section were added at the last minute to satisfy EPA. The proposed changes have the potential to significantly alter the process and timing of how LID is incorporated in Priority projects.

First it should be noted that the proposed change to capture and infiltrate the 85<sup>th</sup> percentile storm event utilizing LID principles is a significant departure from the current permit. In implementing these changes, the Permittees will require time to transition and develop the new criteria and to educate municipal staff on how to implement LID to meet the new standards. The draft permit recognizes these needs and allows 12 months to update the Model WQMP and 12 months to develop feasibility criteria to be used in assessing the applicability of LID in projects.

### Paragraph C.1

The concern with the proposed change in Section XII.C.1 is that deletion of the phrase "that meet the feasibility criteria established pursuant to Section XII.E1" can be interpreted to require the Permittees to begin immediate implementation of LID following permit adoption. Maintaining the language of the third draft permit makes it clear and unambiguous that Priority projects implement low impact development principles if it is feasible based on criteria established in Section XII.E. However, Section XII.E.1 allows



12 months for development of the feasibility criteria. Clearly, making a determination now that LID is not feasible that is inconsistent with future feasibility criteria is problematic. For this reason the timing and implementation of LID is very important.

The permit also recognizes that there are a number of constraints to implementing LID such as limited space, soil imperviousness, site stability (slopes), Brownfields and other factors that do not allow for the implementation of LID. All of these factors need to be considered in determining whether LID is feasible. Without the feasibility criteria, implementation of LID by the Permittees would not be practical.

Section XII.C.1 is also explicit in allowing the Permittees 12 months to update the Model WQMP to incorporate LID principles. How LID is to be considered and incorporated into Priority projects will be the basis of the Model WQMP update, which will also consider the feasibility criteria developed in Section XII.E.1. This effort will not be completed until 12 months after permit adoption. In the interim, Permittees will continue to implement the BMPs as required by the current permit as noted in the discussion on April 24<sup>th</sup>.

**Recommendation:** Maintain the existing language in Section XII.C.1 of the third draft permit or alternatively adopt the County of Orange recommended language.

#### Paragraph C.2

With regard to inserting "Projects that do not comply with this requirement shall meet the requirements established in section XII.E.1 for alternative or in-lieu compliance" to Section XII.C.2 as proposed by EPA, there is a concern that this language will require projects that cannot infiltrate, harvest, reuse or evapotranspire or capture the 85<sup>th</sup> percentile storm event to meet alternative or in-lieu criteria such as contributing to a fund or other acceptable program. This is a significant change from the language of the third draft permit which allowed captured runoff to be treated with conventional treatment controls as allowed by the DAMP.

The proposed change to the paragraph can be interpreted to read that projects that cannot fully infiltrate, harvest, reuse or evapotranspire or capture will need to meet in-lieu programs and still require treatment by conventional BMPs. If that is the case, many if not all of the projects in the City of Orange will be required to contribute to some sort of fund or will require waivers because most projects in the City are redevelopment type and full implementation of LID is not possible due to limited space. We do not believe this is the intent of the paragraph but the language can be interpreted in this manner. To avoid confusion it is suggested that EPA's language be deleted.

**Recommendation:** Delete the second sentence in Section XII.C.2 "Projects that do not comply with this requirement shall meet the requirements established in section XII.E

for alternative and in-lieu compliance." Alternatively, adopt the County of Orange recommended language.

LID Systems

There is also concern that allowing only BMPs that capture the 85<sup>th</sup> percentile storm event will not allow the use of systems such as grass swales or vegetated strips that are considered LID but are not typically designed as full capture systems. Their function is simply to filter the runoff based on flow rate not volume. If these types of systems are used at all, under the new criteria they will become infiltration trenches because runoff from the design storm event will not be allowed. This is contrary to the use of these systems in storm water BMP design.

Section III

Another item that needs to be clarified is the latest revision included in Section III.3.ii where the listed nonstorm water discharges are acceptable only if they are from permittee owned or operated activities. Item 3.ii.d regarding swimming pool discharges is of particular concern because while they may be allowed from municipal facilities, they will not be allowed in the larger residential applications.

Dechlorinated swimming pool discharges have been allowed in all previous municipal storm water permits in accordance with federal regulations. However, the discharges are not listed in 3.i and as written will potentially ban their discharge within a permittees jurisdiction. Please clarify if this is the intent and how this conclusion was reached. The third draft permit simply specified certain requirements and did not restrict their discharge to municipal activities.

Sincerely,

  
Joe DeFrancesco  
*JW* Interim Public Works Director

cc: John Sibley, City Manager  
Alice Angus, Director, Community Development  
Chris Crompton, Manager, Environmental Resources County of Orange