

Construction Industry Coalition on Water Quality

June 20, 2014

Mr. Adam Fischer
Santa Ana Regional Water Quality Control Board
3737 Main Street, Suite 500
Riverside, CA 92501

Via Email: adam.fischer@waterboards.ca.gov

RE: Comments on Draft Orange County Municipal Separate Storm Sewer System ("MS4") Permit, NPDES Permit No. CAS61080

Dear Mr. Fischer:

The Construction Industry Coalition on Water Quality (CICWQ) is submitting comments concerning the Draft Orange County Municipal Separate Storm Sewer System ("MS4") Permit, NPDES Permit No. CAS61080 (herein referred to as Draft Permit). We are submitting this letter on behalf of the CICWQ membership, which is described below.

CICWQ is an advocacy, education, and research 501(c)(6) non-profit group of trade associations representing builders and trade contractors, home builders, labor unions, landowners, and project developers. The CICWQ membership is comprised of members of four construction and building industry trade associations in southern California: The Associated General Contractors of California, Building Industry Association of Southern California, Engineering Contractors Association, and Southern California Contractors Association, as well as the United Contractors located in San Ramon. Collectively, members of these associations build a significant portion of the transportation, public and private infrastructure, and commercial and residential land development projects in California.

In preparing this comment letter, we draw from many years of our members collective experience working both on public infrastructure and facilities, and private commercial, industrial, and residential development projects in Orange County that are governed by NPDES permits issued by the Santa Ana Regional Water Quality Control Board (Regional Board).

Our review of the Draft Permit notes some helpful clarifications to the permit requirements generally, such as the Regional Board's affirmation of the iterative approach to meet MS4 stormwater discharge compliance obligations. Conversely, we note significant changes to the permit requirements for Section XII. New Development (Including Significant Redevelopment), and find that some proposed changes are not technically supported, or are unjustified at the current time given the evolution, documented accomplishments, and management approach of the Orange County stormwater program. We support these assertions with evidence, and offer suggested improvements to the permit below.

- I. Regional Board staff indicated in a presentation to the Regional Board members on June 13, 2014, that it “concur[s] that scope of non-priority projects needs to be narrowed” and that “alternative language is being developed” (See Draft Permit, Section XII.M). CICWQ agrees that the applicability requirements of non-priority projects should be closely evaluated, and believes that additional examination will show that applicability requirements are overly broad. And in fact, given input provided by the principal and co-permittees at the Draft Permit Workshop on May 19, 2014, and at the June 13, 2014, Regional Board meeting, such broad project applicability requirements will create a new bureaucratic process and project review layer, and impose additional compliance costs for projects that pose little or no threat to water quality.
- II. Section XII.A of the Draft Permit requires the cities to create and report on specific “measurable and verifiable” items in their General and Specific Plans including specific treatment controls and design features. As the Regional Board knows, the General Plan is an expression of a particular community’s development goals and objectives in a broad context. It seems highly irregular and inappropriate to impose precise regulatory requirements in the General Plan which applies to all actions a City may take. The General and Specific Plan requirements of Section XII.A seem unnecessary, and we suggest deleting them from the Draft Permit.
- III. Throughout Section XII, we find examples where the Regional Board has extracted Model WQMP and supporting Technical Guidance Document (TGD) guidance information and inserted it into the Draft Permit language in an attempt to reduce “incorporation by reference.” In addition, Regional Board staff has indicated that the language drawn from the Model WQMP and TGD in the Draft Permit “reflects a change in how enforcement will occur.” At this point in time and given the current state of the Orange County stormwater program, which is using the Model WQMP and TGD process that has been in place since 2011, we see no justification in any Draft Permit Finding for changing the existing process for preparing a WQMP. We know the principal and co-permittees share this viewpoint as well.

Specific instances of overly prescriptive requirements and process appear throughout Section XII, Subsections D through J, and primarily address LID BMP evaluation and use at priority project sites. For example, Section XII.J is highly prescriptive in requiring harvested water demand calculations that are currently addressed in the TDG in sufficient detail and with sufficient flexibility for different project conditions. The evaluation and use of stormwater harvest and use systems is best addressed comprehensively using the existing Model WQMP LID BMP hierarchy and evaluation process and TGD tools for guidance and direction. Moreover, our concerns about the overly prescriptive language are amplified by the very short time period (including time relative to cycles of development in Orange County) the existing Model WQMP process has been required of project proponents—less than three years. It is unclear to the building and construction industry the findings of “audits” of municipal programs implementing the Model WQMP program enacted in 2011, and the allegation these “audits” demonstrate

a lack of enforcement that would precipitate a course correction of such magnitude as proposed in Section XII.D-J of the Draft Permit.

While the Regional Board cites the need to provide clarity and create consistency in eliminating “incorporation by reference,” the Draft Permit language in effect creates inflexibility and stifles innovation rather than fostering it. The Model WQMP and the TGD provide the necessary engineering guidance and design criteria, as well as the flexibility to adapt to project site conditions; and these documents are adaptive and can be changed as new information is gathered, whereas the permit is generally fixed with respect to adaptation. And, we know from presentations by the principal and co-permittees that they have spent more than \$1 million in resources to develop the Model WQMP and TGD. Changing course now is unwarranted, and threatens to undermine the current, positive program momentum.

We understand the staff at the Regional Board has agreed to meet with the principal and co-permittees and their engineering support team to discuss these issues in detail, and we hope that much of the unnecessary prescriptive permit language can be removed in favor of reliance on the existing Model WQMP and TGD processes.

- IV. We appreciate the positive development toward providing clear, approvable pathways for the responsible and appropriate use of sub-regional and regional opportunities for managing stormwater runoff from a priority project (Section XII.K. Off-site Structural Treatment Control BMPs: Regional and Sub-Regional Facilities). However, we note that the 2009 MS4 permit’s in-lieu or alternative compliance provisions have been eliminated in favor of those requirements defined in Section XII.K a-d and in Section XII.L. Waiver of Structural Treatment Control.

We are concerned about the loss of such compensatory programs and the loss of options to enact such programs for projects that cannot reliably retain the 85th percentile, 24-hour storm and do not have an off-site BMP option available. Without these compensatory options (such as a BMP retrofit program to create “credits” for a fee in lieu fund), the only option would be to seek a waiver from the Executive Officer. This will discourage advancements in the Orange County stormwater program by reducing available options. Moreover, the option for using an off-site LID BMP that is not publically-owned as described in Section XII.K.d is confusing and relies on an equally confusing footnote (Footnote 9, page 51) for implementation. We ask the Regional Board to clarify the intent and process described here, and to provide alternative compliance options including potential use of in-lieu or credit trading programs.

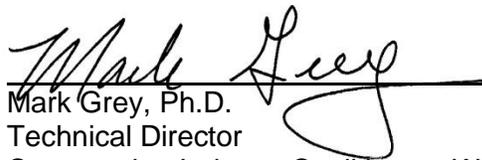
- V. We note that the Regional Board is proposing to require that project proponents use a 1.5 times the on-site design capture volume sizing factor when designing biotreatment BMPs. It appears these biotreatment sizing criteria are being copied from MS4 permit to MS4 permit since they first appeared in the Ventura MS4 permit in 2010. We remain unconvinced these criteria are supported with

technical evidence beyond “modeling” done as part of the Ventura County permit development process, and again ask the Regional Board to cite or provide evidence as to the justification for using these criteria in Orange County.

- VI. The performance standard for hydromodification has been changed in this Draft Permit compared to what is contained in the current 2009 MS4 Permit. It is our understanding that the Regional Board intended to maintain the current standard, but inadvertently omitted key compliance pathways for projects that cannot reliably retain the 2-year storm event. We also understand that the Regional Board staff has indicated agreement with addressing this issue in a manner consistent with redlines previously submitted by Dean Kirk of the Irvine Company on May 27, 2014. We support these proposed redlines.

CICWQ’s membership is in the forefront of water quality regulation, providing to water quality regulators practical ideas and solutions that are implementable and that have as their goal clean water outcomes. If you have any questions or would like to discuss the content of our comment letter, please feel free to contact me at (951) 781-7310, ext. 210, (909) 525-0623, cell phone, or mgrey@biasc.org.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mark Grey", is written over a horizontal line. The signature is fluid and cursive.

Mark Grey, Ph.D.
Technical Director
Construction Industry Coalition on Water Quality