

Construction Industry Coalition on Water Quality

November 20, 2009

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

RE: Tentative Order No. R8-2009-0036 (NPDES Permit No. CAS618036) Waste Discharge Requirements for the San Bernardino County Flood Control District, the County of San Bernardino, and the incorporated cities of San Bernardino County within the Santa Ana Region.

Dear Mr. Thibeault:

On behalf of the more than 3,000 member companies of the Construction Industry Coalition on Water Quality (CICWQ), we would like to thank the Santa Ana Regional Water Quality Control Board (Regional Board) for the opportunity to offer this public comment on the Draft San Bernardino County Municipal Separate Storm Sewer System Permit, Tentative Order No. R8-2009-0036 (Draft Permit). This letter provides additional comments on the Draft Permit released for public review on October 22, 2009.

I. Introduction

CICWQ is comprised of the four major construction and building industry trade associations in Southern California: the Associated General Contractors of California (AGC), the Building Industry Association of Southern California (BIA/SC), the Engineering Contractors Association (ECA) and the Southern California Contractors Association (SCCA). The membership of CICWQ is comprised of construction contractors, labor unions, landowners, developers, and homebuilders working throughout the region and state. We have stated the purpose of our organization in past letters to the Regional Board and will not repeat it here.

The Draft Permit released on October 22, 2009 contains some issues that we must raise here, including a change in the definition of low impact development (LID) from that first proposed in the July 10, 2009 Draft Permit that is narrow and inconsistent with LID guidance

documents, and several inconsistencies in approach and permit content in comparing the San Bernardino County and Riverside County MS4 permits. We also include a few suggestions for changes regarding Section XI references within the Draft Permit text.

II. Comments on Draft Permit

Section XI: New Development (Including Significant Redevelopment)

Section D.2. Water Quality Management Plan (WQMP) Requirements

We note that the principal permittee is given 12 months from the date of adoption to revise its WQMP Guidance and Template. The Draft Riverside County MS4 Permit provides 18 months to perform this task. We recommend allowing 18 months to complete the necessary WQMP updates.

Section E.1. Low Impact Development (LID) and Hydromodification Management to Minimize Impacts from New Development/Significant Redevelopment

We have the same comment as above. San Bernardino County is given 12 months to incorporate LID provisions, while Riverside County is given 18 months. We recommend 18 months to complete the necessary document updates to incorporate LID principles.

Section E.4., and Footnote 91

We suggest deleting the first sentence of Footnote 91 which states: "Only volume bio-treated and retained onsite qualify towards the volume capture standard." This statement did not appear in the Draft Permit released on July 10, 2009 and is inconsistent with the same provision found in the Draft Riverside County MS4 Permit (page 91 of 122, Footnote 53). Moreover, it is inappropriate because both bioretention volume based best management practices (BMPs) and biofiltration flow through BMPs are acceptable biotreatment alternatives for meeting the LID water quality volume capture standard. In addition, we reiterate our previous comments to the Regional Board that the use of biotreatment BMPs must be allowed to meet the volume capture

standard without performing a detailed infeasibility analysis of infiltration, harvest and use, or evapotranspiration as is currently required. We have demonstrated in the written record and through expert testimony to the Board that these systems under many circumstances provide equal or better pollutant removal than zero discharge type BMPs only. There is no evidence to suggest that the exclusion of properly engineered treat and release LID BMPs in the LID standard will lead to better water quality on a long-term pollutant removal basis.

Section XI.E.5.d.ii.c

There are many different types of engineered, maintained flood control channels that are not susceptible to hydromodification. We suggest modifying section XI.E.5.d.ii.c. to read “all downstream conveyance channels that will receive runoff from the project are engineered and regularly maintained to ensure design flow capacity, and no sensitive stream habitat areas will be affected.” In addition, we suggest striking the second sentence in this clause. The date of compliance with agency approvals provided in the Draft Permit is arbitrary and nexus to the listed agencies is unclear relative to hydromodification control.

Section XI.E.7

This section refers to a feasibility analysis for LID that “includes technically based feasibility criteria for project evaluation to determine feasibility of implementing LID”. We reiterate our previous comments and testimony that economic feasibility must also be considered when determining the implementation feasibility of LID BMPs. This is especially important when the feasibility of implementing onsite harvest and use systems is considered relative to the availability of a recycled water supply. Footnote 91 also addresses the feasibility analysis process and suggests that feasibility determinations will only be technical in nature and not consider economics. We strongly suggest that economic considerations be expressly included in the LID BMP feasibility analysis process.

Attachment 4. Glossary

The current definition of Low Impact Development (LID) given within Attachment 4 on page 109 of 119 is unacceptable and narrowly defines LID to only those practices that infiltrate, harvest and use, or evapotranspire water onsite. The LID definition in the Glossary for the July 10, 2009 Draft Permit should be restored and used, as it accurately reflected the principles of LID and the range of possible practices supporting application of those principles.

III. Comments on section reference inconsistencies

We believe that the last sentence of Section E.4. should refer to Section XI.E.10 and Section XI.G, rather than the current reference to Section XI.E.8 and XI.F. Also note that Footnote 92 should refer to Footnote 91, not Footnote 85 as is currently written.

In Section XI.E.5.d, Hydrologic Conditions of Concern (HCOC), part “vii” should be revised to part “ii.”

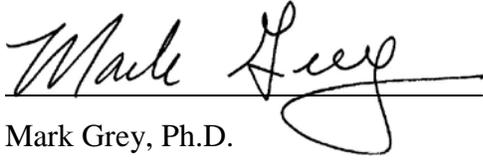
In Section XI.E.10, the reference to “under Section F” should be changed to read “under Section G.”

Summary

CICWQ continues to be an active participant working with the Regional Board and other stakeholders moving forward, and we trust that the Regional Board will continue to promote and engage in an inclusive stakeholder process leading up to permit adoption. If you have any questions or want to discuss the content of our comment letter, please feel free to contact me at (909) 396-9993, ext. 252, (909) 525-0623, cell phone, or mgrey@biasc.org.

Gerald Thibeault
November 20, 2009
Page 5 of 5

Respectfully,

A handwritten signature in cursive script that reads "Mark Grey". The signature is written in black ink and is positioned above a horizontal line.

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