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**To:** <madackapara@waterboards.ca.gov>  
**Date:** 11/24/2009 2:10 PM  
**Subject:** Re: TMDL Implementation in MS4s

Hi Mike - Per your request, here are comments on the documents you provided last night.

As I noted at the August 3, 2009 workshop on these two permits, and as we stated in our September 9, 2009 letter regarding the July 10, 2009 draft San Bernadino County permit, and our October 8, 2009 letter on the July 23, 2009 draft Riverside County permit, we'd recommend you use an approach consistent with the Orange County permit adopted by your Board for the incorporation of relevant TMDLs. Our two comment letters provided rationale for why the approaches proposed in the previous draft permits, and the adopted Orange County permit, were appropriate for incorporating TMDLs.

The apparent intent of the revised permit is to rely on implementation of plans that don't yet exist to determine whether WLAs have been met, rather than the achievement of measured water quality improvements as has been required by RB8's Orange County permit and other recently adopted California MS4 permits. At a minimum the permits should be revised to provide more detail about the content and implementation of these to-be-prepared plans. As currently drafted, the permits do not provide the necessary expectations for what will be covered in these plans or how necessary updates to the plans will be prepared. Without these detailed expectations, enforcement of the permits will be compromised. The following are our initial suggestions, given the limited time we've had with the new permit language.

The revised permit findings (e.g. page 37 of the 3rd draft Riverside permit) describe "a detailed plan and implementation schedule." Page 62 of the same draft permit also includes a brief description of this plan. These descriptions need to be expanded to provide detailed guidelines which clearly lay out the expectations for the content of these plans. At a minimum, the plans must include specific details on the type of BMPs to be implemented, locations where these BMPs will be implemented, who will be responsible for implementing these BMPs, what expected load reductions will be achieved, what monitoring will be conducted to quantify load reductions, along with the submittal of conclusions about BMP performance and the achievement of water quality standards. The plans must include comprehensive schedules, with enforceable deadlines for all of the activities described in the plans.

The permits, in both the Findings and Permit Requirements sections discuss the requirement that permittees propose and implement additional BMPs if the initially proposed measures are not effective in meeting water quality standards. Again, the permits need greater detail on these expectations. There should be specific timeframes provided for the submittal of these updated plans of improved additional BMPs. For example, the permit could require that within 60 days of conclusions that BMPs are not achieving water quality standards at a specific monitoring location, the permittees shall propose improved additional BMPs, including a rationale for why these new measures will be successful at achieving water quality standards. The permit should include a specific timeframe, for example within 30 days of approval of the amended plan, for when implementation of the amended plan shall begin. The permit should also make it clear that the amended plans must be submitted for EO approval, and thus public review, so as to avoid

vulnerability from a EDC/Waterkeepers challenge for not properly providing the public notice of the content of the permit and for not properly specifying the controls as the regulator.

The new reliance on plan implementation, rather than achievement of specific water quality improvements, requires that these expanded expectations be specified in both the findings and permit requirements sections of these two permits.

Regarding the comment that your legal counsel has concluded that it is not possible to both incorporate the WLAs as numeric limits, and require WLAs by implementing BMPs, we have a few thoughts. As described in our above-referenced comment letters on these two permits, when a BMP-based approach is used for achievement of WLAs, the details on the specific BMPs to be implemented to achieve the WLAs are to be included in the permit's administrative record.

When this has been achieved, the permit may require either the implementation of the required specific BMPs, or achievement of the numeric WLAs. Continuing with this hypothetical situation, should the permittees choose to implement the specified required BMPs they could achieve compliance by taking the necessary actions, including implementation of additional, improved BMPs, should they be necessary. If the permittees choose not to implement the required BMP approach, they could achieve compliance by meeting the permit's numeric WLAs.

Unfortunately the approach being proposed for these two permits relies on BMP plans that don't yet exist, which are being submitted subsequent to permit issuance. However, if you so desire, we believe it would be possible for the permit to provide an option of either using a BMP-based approach or a numeric receiving water limit for permit compliance.

I'll be out of the office after today until next Tuesday, December 1.

Have a nice holiday,

- John