

145
Oxnard
Chamber of Commerce

June 7, 2010

Via Email – July082010VCMS4@waterboards.ca.gov

Los Angeles Regional Water Quality Control Board
Mary Ann Lutz, Chair
Madelyn Glickfeld, Vice Chair
Steve Blois
Francine Diamond
Maria Mehranian
Jeanette Lombardo
320 West Fourth Street, Suite 200
Los Angeles, CA 90013

RE: Docket Date July 8, 2010 Public Hearing re Reconsideration of the National Pollutant Discharge Elimination System Permit for the County of Ventura Watershed Protection District, the County of Ventura, and Incorporated Cities Therein (Municipal Separate Storm Sewer System) Draft NPDES Permit No. CAS004002 and Order No. 09-0057

Dear Chairperson Lutz and Board Members:

As the Chief Executive Officer of the Oxnard Chamber of Commerce (Chamber), we seek recognition in this proceeding as an "Interested Party" and request the inclusion of our comments in the record of these proceedings. We believe that the Chamber and its membership mirror the values of the City of Oxnard and its concern over clean water and specifically the water quality of discharges of return water into the Pacific Ocean and the cleanliness of our local beaches.

The City of Oxnard is both proud of and benefits from the maintenance of a high level of water quality in the ocean and our wonderful uncrowded beaches. Its citizens (and those of the County) enjoy not only the beachfront areas but harbors and wetlands within or adjacent to our city boundaries. The city (and the Oxnard Chamber of Commerce) is motivated to preserve and enhance the cleanliness of adjacent ocean waters.

The City of Oxnard and Ventura County has earned the recognition it has received for its clean water programs and accomplishments. Their efforts are tangible proof of its commitment to enhancing water quality.

Even though we believe the Chamber's environmental values mirror those of the Los Angeles Regional Water Quality Control Board (Board), the current MS4 Permit, Order No. 09-0057 is very troubling to us. Although we recognize its intent is sound, the Permit's particular version of Low Impact Development (LID) and Best Management Practices (BMPs) and tactics are largely measures that are unproven when applied to a region as large and diverse as Ventura County. As our population grows, Ventura County can anticipate many different situations where the development of public or private improvements on undeveloped areas or the proposed redevelopment of urbanized areas is necessary to serve its population's needs. Our needs include the development of agricultural lands within the Save Open Space and Agricultural Resources (SOAR) boundaries, areas designated for redevelopment, and residential development patterns

ranging from low density single family detached dwellings to proposed high-rise condominiums within the county's and the city's boundaries. We also need to provide places for employment.

The City of Oxnard provides a very significant portion of the employment base for the County of Ventura. Providing for additional employment areas within the county is not merely an economic goal but also an environmental goal. We must reduce the significant percentage of our population who commute out of the county for work. The result is a potentially avoidable increase in vehicle miles traveled and the production of greenhouse gases, contrary to the goals of both Assembly Bill 32 and Senate Bill 375. From our prospective, the stormwater strategies adopted by this Board's MS4 clearly affect not only water quality, but where they impact the design of development that may occur; they affect our region's ability to achieve other goals, such as enlarging our employment base.

Although the draft Permit recites numerous "Findings of Fact," the study (See Horner, 2007, Finding No. 23-25) cited in support of the current MS4's ability to achieve its claimed goals throughout the diversity of the use of land in the City of Oxnard, including employment centers are not adequate in our opinion to justify the reliance presented by the MS4's particular LID and its mandated, limited, and prioritized palette of BMPs. The current MS4's limited but mandated BMPs are problematic where either redevelopment, high density, mixed-use or employment centers are proposed.

Employment centers generally follow patterns of single story buildings with a low building site coverage required by city zoning for a Floor Area Ratio ranging from .4 to .5 (40-50%) lot coverage; yet land uses of this type are clearly a key element in the City of Oxnard's efforts (with full support of the Chamber of Commerce) to accommodate population growth into a more sustainable and economically prosperous community.

Our concerns with respect to the existing MS4 include the proposed deletion of Findings of Fact No. 19 from the approved Permit, which provide a clear "warning bell" that the adoption of these particular LIDs and limited BMPs has not been established in Ventura County as providing a reliable approach to assuring clean stormwater runoff. Such "Findings" include, for example, prior Finding No. 19 (Page 11 of the draft Order):

"Staff finds ... [a]t the heart of this controversy is a dispute regarding the feasibility and effectiveness of requiring a fixed volume of stormwater to be captured and retained on site for infiltration, reuse, and evapotranspiration, as opposed to permitting a portion of the stormwater to be released off site after it is treated, when it is infeasible to retain the required stormwater on site due to site specific conditions."

"... Factors that affect the feasibility of a fixed volume capture standard include, but are not limited to: soils infiltration capacity, subsurface pollution, and locations in urban core centers."

"... This [BMP approach] may result in ponded water on site with attendant health and safety risks, saturation of the near surface soils, and reduction of

water resources in Regional waterbodies. These effects could damage site structures, increase groundwater pollution by forcing enhanced pollution spreading, or destroy aquatic habitat. Staff finds these reasonably potential effects are not well evaluated scientifically."

The Draft Order and Permit has three major features which we believe individually or in combination are flawed.

First, the Permit's 5% limitation of "Effective Impervious Area" ("EIA") on any site when applied to a very wide range of development activities found in Section E. III.1.(b) appears to ignore many factors that may seriously impede the reliability of this storm water tactic's reliability to enhance water quality while allowing reasonable and needed development to proceed.

Second, the Permit as noted above requires specified BMPs for development sites such as infiltration, rainwater capture and reuse and evotranspiration be used to address the rainwater capture standards related to a 85th percentile storm rather than allow a broader palette of BMPs that may provide more effective in their performance be used. The unanswered question is, "What will happen to stormwater if these approaches do not work?"

Third, the Permit as noted above requires 95% of impervious areas to achieve storm water treatment through retention methods, while also requiring treatment of pervious areas such as landscaping, found in Section E. III.1.(c). This will result in the unintended consequences of separate and duplicative treatment systems for the pervious and impervious areas or the retention of the entire storm water treatment volume for the entire site, not just the impervious areas.

In lieu of the draft features of this Permit, we suggest that the Regional Board adopt what is popularly known as "Version 4" of the MS4 dated April 29, 2009, referenced in the Notice of Public Hearing as presented to the Board on May 7, 2009. This Permit provides a more conventional approach to LID design considerations, but it is also better understood and is proven as an effective approach.

One feature of the Version 4 MS4 Permit, however, remains objectionable. That feature is the proposal that the cities within the County be subject to what are known as Municipal Action Levels (MALs), Part 2 of the April 29, 2008 draft. These are perceived by the cities as a source of litigation, and the potential award of attorney's fees. Given the accomplishments of the Ventura County cities, those threats are hardly necessary to motivate the Ventura County cities (and Oxnard) to comply with an MS4.

MALs generally relate to requirements of the cities to address in many cases through retrofitting of existing impervious services such as streets, parking lots, etc., but also constitute "Unfunded Governmental Mandates" as that term is used in California Constitutional Article XIII B.

Los Angeles Regional Water Quality Control Board

June 7, 2010

Page 4

As recently found by the Commission of Governmental Mandates¹, various types of MS4 requirements, many of which are found in the existing Ventura County MS4 constitute "Unfunded Governmental Mandates" and thus are suspect under the California Constitution's Article XIII B.

The Draft Order No. XX-XXXX, Finding No. 7, Page 17 makes the direct claim that this MS4 does not impose Unfunded Governmental Mandates on the City of Oxnard or other Ventura County cities.

We disagree and feel such mandates should be inapplicable to Ventura County Cities without adequate state funding, and in any event, are proven unnecessary given the track record of Ventura County cities in their efforts to achieve clean water and stormwater discharges.

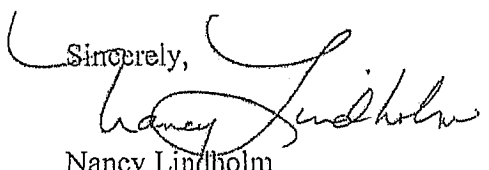
We therefore urge, for these reasons, the earlier Version 4 Permit MALs be stricken from Version 4 of the Permit under contemplation by this Board, and it be adopted in replacement of Order No. 09-0057, NPDES Permit No. CAS004002.

The mission statement of the Ventura Countywide Stormwater Quality Management Program is as follows; "Enhance, protect and preserve water quality in Ventura County water bodies using proactive and innovative ideas for preservation of biodiversity, ecological viability and human health. Work as a countywide team with public agencies, private enterprise, the environmental community and the general public to locally implement Clean Water Act requirements, balancing the actions taken with social and economic constraints".

The current Permit limits these proactive and innovative ideas by requiring only retention as a means to treat stormwater and does not balance the actions taken within the Permit with the social or economic constraints by not recognizing economic infeasibility. We agree with and support the mission statement of the Ventura Countywide Stormwater Quality Management Program; however, we do not feel that the land development section of this permit (Order No. 09-0057) supports the goals of this statement.

Thank you for your concern and attention to these matters. I would be pleased to answer any questions you may have, should they address non-technical matters.

Sincerely,


Nancy Lindholm
Chief Executive Officer

cc: Ivar Ridgeway, LA-RWQCB

¹ See Commission on Governmental Mandate "Test Case" regarding RWQCB-San Diego Order No. R9-2007-001 (attached).