



April 3, 2007

Mr. John Robertus  
California Regional Water Quality Control Board – San Diego Region  
9174 Sky Park Court Suite 100  
San Diego, CA 92123

**RE: NWU:10-6000.02:haasj, Orange County Municipal Storm Water Permit Reissuance  
Tentative Order No. R9-2007-0002**

Dear Mr. Robertus:

The City of Dana Point is pleased to submit the comments herein regarding Tentative Order No. R9-2007-0002.

First of all, the City would like to recognize that the joint efforts of our Orange County Water Quality experts and the efforts of Jeremy Haas and other members of board staff have provided major water quality improvements during this permit period. South Orange County represents a small portion of the San Diego Region having only three beach cities, Laguna Beach, Dana Point and San Clemente on the coast. However, all three beach cities are now petitioning for delisting of beaches from the 303d list! We are asking for adjustments in the tentative order to facilitate and enable our successes to continue in this unique San Diego Region Sub-Area.

Second of all, the City of Dana Point asks that the Board refrain from any new prescriptive requirements in this permit regarding bacteria impaired waterbodies until the results of our major Doheny State Park Epidemiological Study and source microbial tracking study are completed. The City of Dana Point is conducting a major epidemiological study and microbial source tracking study of Doheny State Beach which follows the pilot study done at Mission Bay. This study begins in 2007 and will be completed in 2009. This multi-million dollar study, funded in part by the City, is a major effort to improve our scientific knowledge. The majority of the watershed area of Southern Orange County is in the San Juan Creek Watershed, which empties to Doheny State Beach. We believe the seven cities in this 1.33 square mile watershed affected by this study and the Regional Board would want to see if this study supports the Mission Bay Study and alters our current bacteria test driven requirements for our Southern California Beaches before continuing with new bacterial TMDL requirements for this Watershed. However the Federal and State Government timetables will not allow this. The TMDL establishment must precede this important scientific study. The point is that we are already required to develop a twenty-year TMDL plan for a "pollutant" that may not be causing a problem or may be primarily avian and natural in origin. In light of this, we are asking for the Board to consider reducing the amount of new prescriptive requirements addressing bacteria-related impairments for this next permit while we develop the required TMDL work and await the results of this important study.

There are numerous issues raised with this new permit that we ask be amended collegially and carefully over the new few months.

*Harboring the Good Life*

General Themes:

1. The City is pleased to see that the "Prohibitions and Receiving Water Limitations" preserves the "iterative process" as the basis for permit compliance. The iterative process is largely consistent with the CASQA progressive approach which the City has incorporated into its program effectiveness assessment (PEA).
2. The specific prohibition on placing treatment controls within "Waters of the US" would preclude immensely beneficial sub-regional and regional approaches to water quality treatment and management. It also appears to be contradictory to some of the new "in stream" hydro modification requirements, as well as potential flood control structure retrofits. Projects such as the Irvine Ranch Water District (IRWD) Natural Treatment System that may ultimately provide better assurance of sustained WQS attainment, as well as Dana Point's Salt Creek Treatment Plant are examples of projects successfully achieving water quality standards and are therefore appropriate to be placed within "Waters of the U.S". Please clarify the intent of this prohibition and address the conflicts between the prohibition, collective treatment and hydro modification requirements. We believe a balance between source controls and collective treatment processes are necessary to achieve results in the near term and the long term.
3. The permit is too prescriptive in terms of the watershed program from the tax payer's perspective. The City requests a less prescriptive program. This is based upon progress that the co-permittees have demonstrated in successful past watershed efforts, as well as South Orange County's Integrated Regional Watershed Management Plan and the ongoing Smartimer Edgescape Evaluation Program that was funded under the state's consolidated grants program.
4. There is limited consideration of the recent studies and investigations that point to key uncertainties with respect to the current regulatory framework and managing stormwater permit compliance. For example:
  - The epidemiological implications of stormwater discharges are frequently cited. However, recent findings questioning the link between water contact standard exceedances and disease occurrence in Mission Bay and the actual surfzone impact of only a small number of Orange County coastal drains are not mentioned. Although the epidemiological impacts of point source sewage are documented, we ask that this be distinguished from the limited understanding and potential impacts of non-point sources.
  - A number of cost-benefit analyses related to the epidemiological impacts of stormwater discharges on coastal waters with bacterial exceedences are presented. However, there is no discussion of the cost-benefit of controlling other contaminants. Since the stormwater permit addresses a number of pollutants found in urban runoff, we ask that the cost benefit analysis should also address a variety of pollutants instead of just one.

5. Many of the findings provided in the Technical Report reference older studies conducted in the 1990's (with the exception of the monitoring data). Newer studies conducted by organizations such as SCCWRP and UC Berkeley are providing new information, particularly on non-point source discharges. Acknowledging newer studies is highly recommended.
6. Throughout the entire permit there is new language that discusses "violations of water quality objectives" instead of "exceedances of water quality objectives". It is requested that the term "violation" be revised to read "exceedance", since a violation dictates the need for potential enforcement action and exceedance dictates the need for follow up action. In fact, the Fact Sheet (pg.8) identifies that the "monitoring data exhibits persistent exceedances of water quality objectives in most watersheds". We believe this is more appropriate language.
7. Maximum extent practicable (MEP) is presented in terms of economic and technical feasibility only. However, The State Water Board in a 2/11/93 memorandum addressing MEP and the California BMP Handbooks state that MEP is achieved through a more comprehensive process of BMP selection that involves consideration of effectiveness, regulatory compliance, public acceptance, cost and technical feasibility. Public acceptance is a key criterion that needs to be explicitly acknowledged, as programs will seldom be approved and funded without public support and Council approval. Please include "public acceptance" in the criteria.

## **Tentative Order No. R9-2007-0002**

### More Detailed Comments:

1. Table 2b should be consistent with Table 3 on page 66-

The City suggests that Table 2b. Common Watersheds and Municipalities provides a better structure of watershed management areas. Specifically, within the Dana Point Coastal Streams, please do not include Laguna Beach, as there is no commingling of any runoff, and all of the Laguna Beach drains drain directly to the Pacific Ocean – not to any Salt Creek tributary.

Please include the area within the Laguna Beach jurisdiction in Laguna Coastal Streams watershed management area or include it in Aliso Creek. Regardless, reporting of the activities within this area has occurred and will continue to occur; however we propose to reorganize the watershed management areas to optimize management and reporting efficiency.

Similarly, the small area within Dana Point jurisdiction, designated in the San Clemente Coastal Streams watershed, could be more efficiently managed in either the adjacent San Juan Creek watershed or included in the Dana Point Coastal Streams watershed, as again there is no commingling of runoff within the San Clemente Coastal Streams watershed. Please make this geopolitical boundary change as well.

Another option for more organized and efficient watershed management planning would be to focus more on the priority watersheds in south Orange County, such as San Juan Creek and Aliso Creek, noting that each City's programs will be implemented throughout each jurisdiction; however the greater effort and more collaborative watershed management would be targeted on these significant watersheds, to achieve a better value/benefit for a greater population.

2. Page 9, Item d, states that "Retail Gasoline Outlets (RGOs) are significant [potential] sources of pollutants in urban runoff." The fact sheet should provide justification to support this.
3. Page 11, Item d. – Please clarify the intent of the statement that "...co-permittees cannot passively receive and discharge pollutants from third parties." We assume this statement means that should the City find other agencies are discharging pollutants into the City's MS4, the City is obligated to notify the responsible agency, and if no action is taken, the RWQCB will be notified. It appears that this relates to schools, industrial, construction and Caltrans agencies who have/will have their own permits and are not under the jurisdiction of the City but may be under the jurisdiction of the RWQCB and therefore RWQCB would be the enforcing agency. It should be noted that Cities cannot be responsible for halting the discharge of another party. Both legal as well as health and safety issues need to be acknowledged.
4. Page 22, Item 6, Infiltration restrictions. Based on discussion at the public workshop held on March 12, it was indicated that the infiltration restrictions are applicable for large "centralized" infiltration treatment BMPs, not every small scale project. Please confirm and define.
5. Page 26, Item 4(b) (ii) & (iii) Site Design requirements. Based on discussion at the public workshop held on March 12, it was indicated that the RWQCB acknowledged that not all site design BMPs can be implemented at all sites due to soil and stability conditions; however the language does not suggest an "as feasible" concept. Please revise the language to reflect that technical/engineering studies may preclude some of the site design BMPs for certain projects.
6. Page 31, Item 9 – The requirements for the co-permittees to develop citing, design and maintenance criteria for each site design and treatment control BMP listed in its local SUSMP is an enormous and complex task. This will need to be a Region-wide effort, allowing co-permittees to modify the list of developed standards to fit their needs. This type of research, coordination and effort, to be conducted properly, with accuracy and best available information will take longer than the 365 days (1 year) plan provided in the permit, especially since each co-permittee will be revising its JURMP. It is requested that the RWQCB please provide two years so that the City can develop good criteria to fulfill this requirement.
7. The expectation that all structural BMPs on private property be annually inspected will create a burgeoning and problematic inspection program, for example. Only priority businesses require annual inspection. We ask that a more reasonable frequency be discussed.
8. Page 31, Item (11) – The requirement for the co-permittees to annually review and update the treatment BMPs that are listed in their local SUSMP is a very large task. It should be noted that *categories* of treatment BMPs are provided in the local SUSMPs, not specific

treatment BMPs, and it would not be anticipated that categories of treatment BMPs would be removed. As technology and treatment BMP design improves, it would be expected that the effectiveness of treatment BMP categories could change over time; however an annual update is excess. The City requests that this requirement be conducted twice during the permit term (mid-term and end-term with submittal of ROWD).

9. Page 31, (e.) It is requested that the RWQCB include options for methods of certification of construction of BMPs, similar to what was included in the WQMP section, as was indicated by the RWQCB at the public workshop that this is the intent.
10. Page 39, Item 2 c (2), It was clarified at the public workshop, that "stormwater management plan" was a general term for erosion and sedimentation control plans. It is suggested the clearer language (i.e. use the term erosion and sedimentation control plan) be provided here, as the existing language implies a new document is required.
11. Advanced Sediment treatment is a statewide issue and should be addressed within the context of the Statewide General Construction Permit.
12. Page 41 d. (b) (iii) "Slope stabilization must be used on all active slopes during rain events regardless of the season, on all inactive slopes during the rainy season, and during rain events in the dry season". Slope stabilization on all active slopes during rain events is unworkable.
13. Page 44, Item g.- The new requirement for the co-permittee to notify the RWQCB when the copermitees issue a stop work order or another form of "high level" enforcement to a construction site within its jurisdiction as a result of storm water violations appears to be an additional, but unnecessary, layer of reporting. This information is already provided in the PEAs. Please delete this requirement. If more reporting is required, please provide justification. Define "high level".
14. Page 47 3.a(4)(c)- The permit requires that the permittees evaluate the existing flood control devices to identify those that are causing or contributing to a condition of pollution. There is no reference to this requirement in the Fact Sheet and the Fact Sheet should provide the justification and rationale for this new requirement. Also, many flood control devices are not within the jurisdictional control of the City.
15. Page 48 – The new Permit requires that permittees design and implement the street sweeping program based on criteria which includes optimization the pickup of auto byproducts based on traffic counts. The Fact Sheet does not include any specific justification for this new requirement. It should also be noted that street sweeping is implemented to address pollutants, such as heavy sediments, trash and debris- not all "auto byproducts". Oils and gas absorb into pavement and removal will not be accomplished by street sweeping. No evidence that pollutants such as nickel or asbestos outside travel lanes where street sweepers operate is provided as rationales.
16. Page 53, Item (1) – Both SIC and NCIS codes should be acceptable, as some Cities have already changed to the NCIS system. Please allow both.
17. Page 55 – The new permit requires the addition of a new program to more fully address mobile businesses. This enhances the current efforts undertaken by the Permittees. (Pg.55 b.(3)). The Fact Sheet recognizes the difficulty in developing/managing such a program, yet

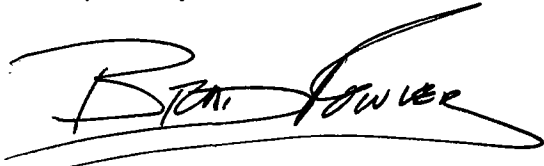
states that this is not a significant change within the permit. It is suggested that this program be piloted and phased in as appropriate, addressing high risk mobile services first.

18. Page 63, Item (e), (2) (a) The requirement that "Obvious illicit discharges must be investigated immediately" is a goal of the Cities; however the language is severe, and it may be impossible in certain circumstances. Cities have limited staff and must prioritize tasks on a daily basis. Emergency situations that threaten health and safety would take priority and pull in "on-call" emergency staff, such as Fire, Police and Hazmat. Water quality concerns are of high importance to the City; however a situation that is not life threatening will be prioritized with other activities occurring at the City at that time. The City requests that this language be revised to "timely manner" or "as soon as possible". Noting that investigation of dry weather monitoring data of non-visible pollutants is difficult and generally requires specialty consultants, two days to begin an investigation is extreme, unless the situation is life threatening. The City recommends five business days to pull together required resources, maps, etc.
19. Page 64, Item h (2) – "Each co-permittee must develop and implement a mechanism whereby it is notified of all sewage spills from private sewer laterals and failing septic systems into its MS4. Each co-permittee must prevent, respond to, contain and clean up sewage from any such notification." This statement must acknowledge that some copermittees do not own, operate or maintain the sewage system and that this requirement is the responsibility of the appropriate sewerage agency. Therefore the co-permittee has no jurisdiction over this requirement and relies on the sewerage agency to prevent, respond to, contain and clean up the spill. This requirement is within the sewerage agencies' permit already and does not belong in this permit.
20. Page 67, Item E. The County as principal permittee, has assumed the role of "lead watershed permittee" which has worked well in the past to ensure consistency in reporting and verification that the Permit provision are being met. Please continue.
21. Page 74 – The permit requires reporting on "fiscal benefits realized from the implementation of the stormwater program"; however it is unclear as to how one would do this and the level of analysis that would be required.  
  
Most requirements listed in the Business Plan are duplicative, as this information is reported in the annual reports, with the exception of item G. Consider item G as a single new requirement.
22. Page 75 – The permit requires that the Permittees annually assess the effectiveness of their JURMPs and provides some objectives that need to be considered. We suggest that the copermittees be provided with a one-year timeline to develop an effectiveness assessment strategy so that the questions, objectives, and data needs for the entire program can be considered and thought through before attempting the assessment.
23. The City supports the comments provided by the County of Orange in regards to the Receiving Waters and Urban Runoff Monitoring and Reporting Program.

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Should you have any questions or concerns regarding the comments provided, please do not hesitate to contact Lisa Zawaski at 949-248-3584. We look forward to working cooperatively to develop a permit that is effective and efficient in meeting our goals of protecting and improving the water quality.

Respectfully,

A handwritten signature in black ink that reads "Brad Fowler". The signature is stylized with a large, sweeping underline that extends across the width of the signature.

Brad Fowler, P.E.  
Director of Public Works & Engineering Services  
City of Dana Point

cc: D. Chotkevys, L. Zawaski City of Dana Point  
J. Haas, SQRWQCB, via e-mail  
C. Crompton, R. Boon, L. McKenney, County of Orange, via e-mail  
South Orange County Permittees, via e-mail