



December 8, 2009

David Gibson, Executive Officer
California Regional Water Quality Control Board
San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4340

Re: **Tentative Order No. R9-2009-0002, NPDES CAS0108740**
Comments on Draft Errata & Updates to August 12, 2009 Public Release Draft

Dear Mr. Gibson:

First, please accept our congratulations on your appointment as Executive Officer of the San Diego Regional Water Quality Control Board. We've enjoyed working with you in the past and are looking forward to working with you, in your new role, on the many challenges facing us in the days and years ahead.

The first of those challenges, of course, is finalizing the new MS4 Permit for South Orange County. We have reviewed the Errata & Updates document distributed by your staff on Wednesday, December 2, with a deadline for comments on Tuesday, December 8. Overall, we believe that the Errata & Updates present a substantially more feasible framework for dry-weather discharge regulation than the provisions in the previous draft Order.

While we very much appreciate your staff's diligence in producing the Updates document on such an expedited schedule, we also note that certain of the many newly-minted provisions would definitely benefit from some thoughtful feedback and polishing. The County of Orange, as the Lead Permittee in (necessarily hasty) consultation with the Co-Permittee Cities, has separately suggested some limited edits to the proposed text. We would like to emphasize our encouragement to you and your staff to consider these or similar adjustments carefully, and to keep communications open over the days leading up to (and including) the December 16 hearing.

Key issues underlying the points addressed in the County's suggested text edits are:

- The lack of provisions specifying what actions are acceptable as "effective prohibition" when a non-point source is identified, whose complete and consistent elimination is not feasible. Complete and consistent 100% elimination of irrigation runoff, for example, is not reasonably achievable by City government in a context with 100,000+ separate private irrigation systems, even if Cities weren't staffing- or cost-limited. Certainly, Cities can commit to appropriate control measures to reduce irrigation runoff, but with so

many systems (operated at night, hidden in back yards, and prone to slipping out of adjustment), there is bound to be some limit to what Cities can realistically achieve. It remains the position of the City of Laguna Niguel that landscape irrigation, irrigation water and lawn watering should continue to be exempted non-stormwater discharges.

- The lack of provisions recognizing that one-size-fits-all NALs for outfalls, set to be equal to or more stringent than Water Quality Objectives for receiving waters, may be expensively over-protective or naively under-protective for certain parameters and certain locations; and that *the process of defining appropriate NALs therefore deserves greater scrutiny*. As may be noted in the table below, water quality even in pristine ‘reference’ streams in this region varies substantially and may *naturally* exceed certain of the proposed NALs *much or most of the time*; while other proposed NALs may be *inadequate to prevent degradation* for other parameters such as pH, which the local Dry Weather Monitoring Program has shown to have a much smaller 90th-percentile range (7.36 to 8.29) than is allowed by the proposed NAL (6.5 to 9.0). This would mean that Co-Permittees’ investigative and control efforts and expenditures, if implemented in accordance with the current draft, would likely be disproportionate to the real issues, forcing too many resources toward ends that may not be reasonably achievable or scientifically necessary; and not enough resources towards other more critical and effective efforts. *Loading* (i.e., considering dry weather flow volume, not just concentration) may be a critical aspect, but is completely ignored in the draft NALs.

Parameter	NAL	SCCWRP Natural Loading Studies & OC Coastal Reference Streams Data
Fecal coliform***	200/400*	25%/12.9% **
Enterococci	33/104*	75%/38.7% **
Nitrate & nitrite***	1.0	67%
Total phosphorus***	0.1	42%
PH	6.5-9.0	<10% <7.36 or >8.29 (per DWMP)

*Mean/max

**Observed Percent Exceedance of Mean/Max WQO

***WQO in Basin Plan allows for 10% exceedance of max value

Rather than re-iterate the County’s comments, we are submitting the above as further supporting information for the County’s recommendations. We believe that the changes proposed in the County’s letter and proposed limited text edits will result in non-stormwater regulation that is more cost effective, less susceptible to legal challenge, and as protective of water quality as the language in the December 2 Errata and Updates.

Please feel free to call me at (949)362-4384 or email npalmer@ci.laguna-niguel.ca.us to further discuss the above issues.

Sincerely,

Nancy Palmer
Sr. Watershed Manager

Cc: Tim Casey, City Manager

