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May 15, 2006

In reply refer to:
SWU:10-5000.02:phammer

Dear San Diego County Municipal Storm Water Copermittee (Distribution List Attached):

SUBJECT: REGIONAL COPERMITTEE COMMENTS ON TENTATIVE ORDER NO. R9-2006-0011: 4/25/2006

This letter includes preliminary responses to the Copermittees' "Regional Copermittee Comments on Tentative Order No. R9-2006-0011: 4/25/2006." The responses are provided for the purpose of facilitating discussion between California Regional Water Quality Control Board, San Diego Region (Regional Board) staff and interested parties at the May 24, 2006 public workshop on the Tentative Order. As such, the responses are not the Regional Board's formal responses to the Copermittees' comments. Formal responses will be provided to the Copermittees' final written comments following the public hearing scheduled for June 21, 2006.

To focus discussion at the May 24th workshop, the Regional Board is providing responses to those Copermittee issues which are likely to benefit the most from further discussion. While other issues raised by the Copermittees are certainly important, limited time at the workshop dictates that issues which represent differing views between Regional Board staff and the Copermittees should receive priority at the workshop. All final comments on the Tentative Order will be responded to following close of the public hearing.

Copermittee comments from their 4/25/2006 document are summarized below and Regional Board responses are provided. The Regional Board responses can serve as the basis for discussion at the May 24, 2006 public workshop. It will also be helpful if the Copermittees can develop and submit follow-up information on the issues discussed below prior to the workshop. In this manner, it may be possible to narrow the issues and increase the possibility for consensus to be reached.

The following seven principal issues are discussed in more detail below:

1. Requirement for Development of a Hydromodification Management Plan (HMP)
2. Treatment BMP Maintenance Tracking
3. Annual Inspection and Cleaning of MS4s
4. Street Sweeping
5. Industrial and Commercial Inspections

California Environmental Protection Agency

6. Watershed Urban Runoff Management Program
7. Program Effectiveness Assessment

Comments and Responses

1. Requirement for Development of a Hydromodification Management Plan (HMP)

Copermittee Comment Summary: The Copermittees request flexibility in choosing an HMP strategy which best fits the number and large size of the region's watersheds. They also request more time to develop the HMP, in line with timelines provided in other parts of the state where HMPs have been developed.

Regional Board Preliminary Response: The HMP method incorporated into the Tentative Order's requirements was chosen because it provides a defensible method for developing a standard and criteria to prevent hydromodification. This specific method relies on the use of local data to support a developed hydromodification standard and criteria. In addition, the method has been used elsewhere in California (Santa Clara County). While the Santa Clara Basin constitutes a smaller area than the area covered under the Tentative Order, the HMP method included in the Tentative Order can be applied to the multiple watersheds of San Diego County. The method provides for calibration to local conditions and inclusion of relevant physical processes, which can account for differences between regions or watersheds.

While the Tentative Order's HMP language incorporates approaches utilized in Santa Clara County, the language does not necessarily preclude the use of other approaches developed elsewhere. For example, portions of Contra Costa's HMP approach, such as its user friendly "integrated management practices" sizing requirements for meeting its flow rate and duration criteria, are allowable under the Tentative Order's current language.

The main thrust of the Tentative Order's HMP language is to require the Copermittees to identify a range of rainfall events from which flows must be controlled at Priority Development Projects in order to maintain the pre-project flow energy, sediment transport, and erosion characteristics of the channel segments receiving urban runoff discharges from the Priority Development Projects. Regarding the HMP requirements, Copermittee proposals should consider acknowledging this principal requirement. In addition, it would be helpful for the Copermittees to identify any HMP method they would like to use which is not allowed by the current language in the Tentative Order.

Regarding timelines for development of the HMP, these timelines have gotten shorter in other regions as the processes and methodologies for HMP development have become better understood. For example, the Santa Clara HMP was developed in approximately

four years, while the later Contra Costa HMP was developed in approximately two and a half years. The Tentative Order requires HMP development in approximately two years. The timeframe in the Tentative Order is appropriate because the Copermittees can take advantage of methodologies and processes previously developed in other areas. In addition, it is important that the HMP be developed and implemented while there is still significant development planned for San Diego County. Projects constructed during HMP development can be expected to be lost opportunities to reduce hydromodification impacts.

2. Treatment BMP Maintenance Tracking

Copermittee Comment Summary: Oversight of treatment control BMP maintenance should primarily rely on maintenance verification submittals, with inspections of treatment control BMPs limited to spot inspections. In addition, inspections should be allowed year round and not limited to the dry season.

Regional Board Preliminary Response: The Tentative Order's inspection requirements for treatment control BMP maintenance are based on the frequency with which treatment control BMP maintenance should occur. Maintenance of treatment control BMPs is recommended to occur at least annually or semi-annually, if not more frequently. The Tentative Order, however, only requires annual treatment control BMP maintenance inspections for a limited portion of existing treatment control BMPs (those that are determined to be high priority). The rest of the treatment control BMPs can be inspected biannually or once every five years. It is reasonable to require inspections biannually or every five years for an activity which should occur on at least an annual basis. Moreover, maintenance of treatment control BMPs is critical to their performance. If they are not adequately maintained, treatment control BMPs are ineffective. Because of the importance of maintenance of treatment control BMPs, regular inspections are necessary to ensure the treatment control BMPs remain effective and reduce the discharge of pollutants to the maximum extent practicable.

Regarding inspections during the wet season, inspections of lower priority treatment control BMPs in the wet season may be appropriate. High priority treatment control BMPs, however, should generally be inspected prior to the rainy season to ensure they are effective for reducing pollutants during rainy season discharges.

Copermittee comments on treatment control BMP maintenance inspection alternatives should address minimum measurable outcomes. Detail on proposed inspection frequencies for various types of treatment control BMPs should be provided. Any proposal for adaptation of inspection frequencies based on statistical analysis should be explained in detail. In addition, any proposal for reliance on compliance verifications should address their effectiveness in ensuring adequate treatment control BMP

performance. Finally, the types of BMPs proposed to be inspected during the dry and wet seasons should be clearly stated.

3. Annual Inspection and Cleaning of MS4s

Copermittee Comment Summary: Annual inspections should not be required for all facilities and the need for cleaning should be determined by the Copermittees. In addition, inspection and cleaning should be allowed to be spread over the entire year, rather than limited to prior to the rainy season.

Regional Board Preliminary Response: The Regional Board included annual inspections of MS4 facilities in the Tentative Order as a minimum measurable outcome for MS4 maintenance. Minimum measurable outcomes are needed because it has been found that inappropriate reductions in MS4 maintenance have occurred during Order No. 2001-01's permit cycle. For example, one Copermittee states in its Jurisdictional Urban Runoff Management Program document that it will inspect 50% of its MS4 facilities annually; however, this Copermittee recently reported that it is now only inspecting approximately 17% of its MS4 facilities, even though approximately 70% of the inspected facilities required cleaning. Such reductions in MS4 maintenance can have significant impacts on water quality by allowing greater amounts of debris to enter receiving waters. Therefore, minimum measurable outcomes are needed to maintain an adequate level of MS4 inspection and cleaning. Copermittee comments on MS4 inspection requirements should focus on proposing alternative minimum measurable outcomes for MS4 inspection.

Regarding cleaning of MS4 facilities, non-storm water discharges to the MS4 are prohibited. In addition, discharges from MS4s containing pollutants which have not been reduced to the maximum extent practicable are also prohibited. To comply with these prohibitions, accumulated waste in the MS4 must be removed. The Tentative Order requires any visible waste to be removed from the MS4, but it is possible that other criteria can be used to trigger cleaning, such as designation of a minimum depth of waste allowable. Copermittee comments on MS4 cleaning should focus on identifying minimum conditions which can be used to trigger cleaning.

Regarding inspection and cleaning of the MS4 over the entire year, it may be appropriate for lower priority areas to be inspected and cleaned during the rainy season. High priority areas, however, should be properly maintained prior to the start of the rainy season to minimize the discharge of accumulated waste. Copermittee comments on this issue should focus on criteria for identifying high priority portions of the MS4 that will be maintained prior to the start of the rainy season.

4. Street Sweeping

Copermittee Comment Summary: The minimum frequencies for street sweeping are not adequately supported; any minimum street sweeping frequencies should be linked to water quality outcomes.

Regional Board Preliminary Response: While the Tentative Order provides minimum frequencies for street sweeping, complete flexibility is provided to the Copermittees to determine which areas must be swept at each of the three minimum frequencies outlined in the Tentative Order. This flexibility allows the Copermittees to design their street sweeping programs in a manner that maximizes effectiveness. For example, areas with high levels of debris are to be swept most frequently, while areas with lower levels of debris are to be swept less frequently. This will maximize the collection of debris with existing resources. It should also be noted that the Copermittees can conduct street sweeping more frequently than the minimum frequencies, if they find it to be necessary.

The California Stormwater Quality Association (CASQA) recommends monthly sweeping of all curbed streets at a minimum. Such a minimum street sweeping frequency is generally appropriate. The overall effectiveness of street sweeping can be improved, however, by acknowledging that some areas should be swept more frequently and other areas less frequently, based on levels of debris generated in the area. CASQA supports this approach, suggesting that municipalities increase sweeping of streets with high pollutant loadings, especially in high traffic and industrial areas. In the Tentative Order, the Regional Board attempted to utilize an approach similar to CASQA's by requiring minimum prioritized street sweeping frequencies based on levels of debris generated.

The minimum street sweeping frequencies are essential because they provide minimum measurable outcomes for street sweeping activities. This assures that all Copermittees are meeting a minimum level of implementation and allows for the Regional Board to track compliance. Copermittee comments on street sweeping should focus on proposing appropriate alternative minimum sweeping frequencies, and explain why the alternatives frequencies are an improvement in terms of water quality on the minimum frequencies included in the Tentative Order. For example, if the Copermittees have found that some streets do not require sweeping, they can identify these types of streets and propose alternative replacement street sweeping approaches.

5. Industrial and Commercial Inspections

Copermittee Comment Summary: The Tentative Order's requirement for inspection of 40% of inventoried industrial and commercial sites is expected to exceed current

Copermittee inspection levels. The Tentative Order should allow for greater use of self-certification and third party inspection approaches in lieu of inspections.

Regional Board Preliminary Response: The requirement for inspection of 40% of inventoried industrial and commercial sites is based directly on regional information provided by the Copermittees in their Report of Waste Discharge. The inspection rate of 40% was chosen to ensure that current levels of inspection continue, while providing the Copermittees with the flexibility they sought in choosing which sites to inspect. It is important that high levels of inspections continue to be conducted, based on the high level of non-compliance observed during inspections. The Report of Waste Discharge reports that during fiscal year 2003-2004, the Copermittees conducted enforcement actions at approximately 27% of commercial sites inspected and approximately 31% of industrial sites inspected. Based on these poor compliance rates, a reduction in inspection efforts is clearly not warranted. Moreover, since commercial inspections were not expressly required in Order No. 2001-01, many commercial sites have yet to be inspected for storm water compliance. Based on previous compliance rates, inspection of these sites should have a positive effect on water quality. Copermittee comments on this issue should acknowledge the significant need for continued inspections at industrial and commercial sites.

Regarding the use of self-certification and third party inspections for compliance verification, the Tentative Order includes an option for using these approaches. The approaches were not included in the Tentative Order as a substitute for inspections because of a lack of detail and supporting information from the Copermittees in their Report of Waste Discharge. Of the two approaches, third party inspections appear to have the most potential. Self-certification appears to lack necessary incentives for accuracy in reporting.

Third party inspections would be used to enhance Copermittee inspection programs, rather than replace them. For example, inclusion of provisions for third party inspections in the Tentative Order could result in an overall increase in the number of sites required to be inspected, but could also result in a reduction in the number of inspections which must be conducted specifically by the Copermittees. This tradeoff is fair and appropriate.

Copermittee comments on this issue should focus on providing a detailed proposal for how third party inspections can enhance the Copermittees' industrial and commercial inspection programs, including identification of the maximum level of third party inspections allowable to meet Copermittee inspection obligations. Such a proposal should address the following: (1) the types of facilities which would qualify for third party inspections; (2) a third party inspector certification program; (3) audits of sites inspected

by a third party inspector; (4) audits of third party inspectors; (5) Copermittee follow-up of third party inspection findings; and (6) any other pertinent information.

6. Watershed Urban Runoff Management Program

Copermittee Comment Summary: Watershed Water Quality Activities should not have to be newly implemented during the permit cycle. Targeted monitoring should be allowed as a Watershed Water Quality Activity. Watershed Water Quality Activities should be required to be implemented over the course of the permit cycle, rather than annually. A Watershed Water Quality Activity conducted in a given year should be allowed to be counted as a Watershed Water Quality Activity in subsequent years.

Regional Board Preliminary Response: Watershed Water Quality Activities are required to be newly implemented during the permit cycle because of the ongoing water quality problems within the watersheds to date. The high priority water quality problems in the watersheds have not been addressed and corrected by current Copermittee activities; therefore, greater effort by the Copermittees is necessary to achieve compliance with applicable water quality standards in each watershed. Moreover, if Watershed Water Quality Activities are not required to be new, it is conceivable that some Copermittees would not do anything additional during the entire permit cycle. Clearly, this does not meet the goals of the watershed requirements or the Tentative Order, considering the ongoing water quality problems within the watersheds.

Regarding the issue of monitoring as a Watershed Water Quality Activity, the Tentative Order currently allows for monitoring to count as a Watershed Water Quality Activity in a given year as long as the monitoring results in the abatement of sources or reduction of pollutant discharges. Monitoring that does not result in the abatement of sources or reduction of pollutant discharges in a given year, but which is part of a larger project to abate sources or reduce pollutants, can be considered in compliance with the long-term Watershed Water Quality Activity requirements of the Tentative Order.

Likewise, planning, design, and assessment efforts conducted in support of a Watershed Water Quality Activity should be considered in compliance with the long-term Watershed Water Quality Activity requirements, rather than the short-term requirements. Such supporting activities should be conducted concurrently with other short-term Watershed Water Quality Activities which abate sources or reduce pollutant discharges. This is necessary because otherwise the vast majority of the short-term Watershed Water Quality Activities requirements could be satisfied through implementation of activities such as planning, design, or assessment; activities which are not quantifiable and do not abate sources or reduce pollutant discharges. It is unlikely that such an approach would have a significant impact on the high priority water

quality problems within the watersheds, which is the overarching goal of the watershed requirements.

Watershed Water Quality Activities implemented during the permit cycle which are found to be effective can and should continue to be implemented in compliance with the short-term Watershed Water Quality Activity requirements. It is important, however, to note that construction of one capital project only counts as one Watershed Water Quality Activity. Subsequent operation and maintenance of the capital project is not a Watershed Water Quality Activity.

Copermittee comments regarding Watershed Water Quality Activities should consider proposing approaches which will ensure that an adequate number of Watershed Water Quality Activities will be implemented which will have a significant impact on the high priority water quality problems within the watershed.

7. Program Effectiveness Assessment

Copermittee Comment Summary: Review and modification of activities to address water quality problems cannot be conducted on an annual basis, since it takes longer than one year to implement, review, and modify activities. Level 5 and 6 assessment of Watershed Urban Runoff Management Programs is impractical on an annual basis and should only be required where applicable and feasible.

Regional Board Preliminary Response: Review and modification of activities and programs based on water quality conditions is a central theme of the Tentative Order. The Tentative Order seeks to link more closely Copermittee activities and programs with water quality results. Requirements for annual modification of Copermittee activities based on water quality data, as well as Level 5 and 6 assessment of watershed programs, are meant to provide unambiguous assessment and modification requirements in the Tentative Order. The Copermittees have made progress towards conducting Level 1-4 assessments; similar progress is now needed for Levels 5 and 6.

While annual modification of activities based on water quality data may be challenging, such modification of activities should be conducted at regular intervals. This will help ensure that modification of the activities based on water quality data actually occurs. Moreover, since the entire purpose of the watershed programs is to correct high priority water quality problems within specific watersheds, it is inadequate to only assess the watershed programs' impacts on water quality every five years. Decisions regarding the watershed programs should continually be informed by water quality conditions.

Copermittee comments on these issues should focus on an appropriate time interval for modification of activities based on water quality data. The Copermittees should also

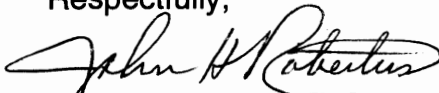
focus on identifying Level 5 and 6 assessments that can be conducted at regular intervals of less than five years. While a full Long-Term Effectiveness Assessment may be impractical, there is often information available which can be used to conduct Level 5 and 6 assessments to some degree.

In preparation of the May 24 workshop, I request that each Copermittee's technical representative discuss with his or her management staff the seven issues to be covered at this next workshop.

In closing, I am very appreciative of the efforts by all parties in the ongoing development of the Tentative Order, and I am greatly encouraged by the continued progress.

The heading portion of this letter includes a Regional Board code number noted after "In reply refer to:" In order to assist us in the processing of your correspondence please include this code number in the heading or subject line portion of all correspondence and reports to the Regional Board pertaining to this matter.

Respectfully,


JOHN H. ROBERTUS
Executive Officer

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