



January 11, 2013

Mr. Wayne Chiu
San Diego Regional Water Quality Control Board
9174 Sky Park Ct., Suite 100
San Diego, CA 92123-4340

Submitted via email: wchiu@waterboards.ca.gov

Subject: Comment – Tentative Order No. R9-2013-0001, Regional MS4 Permit,
Place ID: 786088Wchiu

Dear Mr. Chiu,

The San Diego Unified Port District (Port) respectfully submits this comment letter regarding Tentative Order R9-2013-0001 National Pollutant Discharge Elimination System (NPDES) Permit and Waste Discharge Requirements for Discharges from the Municipal Separate Storm Sewer Systems (MS4s) in the San Diego Region (Tentative Order).

The Port has been actively involved in the development process of the Tentative Order and we support the Regional Board's Water Quality Improvement Plan (WQIP) concept in the Tentative Order with its proposed flexibility to focus resources on the priority problems in the watershed. However, the Tentative Order also contains prescriptive requirements that are in addition to the WQIP and would be very costly and at times infeasible to implement. With constrained budgets and staff resources, these additional costs may unintentionally limit the ability to conduct other water quality efforts having greater environmental benefits for the Bay.

The Port has worked alongside the other San Diego County Municipal Copermitees (Copermitees) to collectively submit a red-line strikeout document recommending changes to the permit language. With the exception of the proposed WQIP-based compliance option, the Port fully supports the recommendations provided in the Copermittee red-line strike-out. This document will be submitted through the County of San Diego. The changes help to clarify permit compliance points and provide a more efficient monitoring program to support the end goal of improving water quality. We strongly encourage you to consider the Copermittee's proposal and the Port's comments listed below.

1. Jurisdictional Accountability

The Port is committed to our role as an environmental steward of San Diego Bay. That commitment is reflected in a number of programs both regulatory driven and beyond compliance, that are focused on protecting and rehabilitating the Bay's resources. The

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Port's Stormwater Program is an important part of this effort. At the same time we recognize that discharges from upstream jurisdictions impact our efforts to protect bay water quality. San Diego Bay is the receiving water body for a large watershed in which the Port is located at the extreme end. We are aware that most discharges from the MS4 to San Diego Bay are from storm drain easements under the authority of other jurisdictions. With this in mind, we support jurisdictional accountability throughout the watershed and we encourage the Regional Board to incorporate these concepts throughout the Permit.

2. WQIP-based Compliance and Modifications to Provision A

The Regional Board staff has presented the WQIP as an iterative process that allows for adaptive management so that compliance with water quality standards is achieved over time. It is the Port's opinion that the WQIP process, as currently proposed in the Tentative Order, adequately allows for compliance based upon WQIP implementation. However, what is missing is the linkage between the Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations in Provision A and the iterative process set forth in the WQIPs.

Modifications to Provision A are required to ensure implementation of that iterative process. Without a modification, jurisdictions are potentially open to third-party lawsuits and their resources may be directed to addressing a one-time exceedance. The Port requests that the Permit establishes a clear linkage between compliance with Provision A to compliance with the WQIP and the other Provisions of the Permit.

3. WQIP Development Timeline

The Tentative Order proposes an aggressive schedule for WQIP development and JURMP program updates. The timeline for WQIP development (9 months) does not allow for adequate time between due dates for required deliverables. Concerns with the timeline are as follows:

- Formal agreements such as a Memorandum of Understanding and/or Cost Share agreements will be required within the watershed groups. Although the preliminary work may begin before permit adoption, the process cannot be completed until the Permit is adopted and the requirements are known. These agreements are integral to upholding jurisdictional accountability within the watershed groups. This process will take an estimated three months.
- The water quality priorities and goals are due within the first six months, followed by a two month public comment period. While this first deliverable deadline may be feasible, potential modifications to the priorities and goals may be necessary as a result of the public comments received. Should modifications to the priorities and goals be required, there will be little time to develop the strategies and schedules.

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- Time is needed to address comments from the public or Regional Board throughout the process and to obtain management and jurisdictional governing body approvals. Governing body approvals take an average of three months.

The Port requests that the timeframe for permit deliverables is extended as outlined in the Copermittee's revised WQIP development schedule in the red-line strike-out submittal.

4. Illegal Discharges: Air Conditioning Condensation

The Tentative Order requires air conditioning condensation to be directed to landscaped areas or other pervious surfaces where feasible. Substantial structural modifications may be required to meet this requirement and discharges of this type may not be a priority pollutant source that is identified in the WQIP. The Port requests that the requirement to direct air conditioning condensation to landscaping be encouraged and not required.

5. Retention Requirement for Priority Development Projects

As proposed in the Tentative Order, Priority Development Projects are to implement BMPs to retain the volume of runoff equivalent to the design capture volume or the estimated volume that would be retained if the site was fully undeveloped. Due to the Port's location at the headwaters of San Diego Bay, a high groundwater table and existing soils with low infiltration rates, retention is not technically feasible on Port tidelands. The Port is at the bottom of the watershed so consequently retained runoff must be stored for a longer period of time after the peak of a storm. Large underground storage tanks to store the runoff would be infeasible because most tanks would have significant design constraints due to the high groundwater table, flat topography, and high receiving water elevation, making gravity flow drainage systems nearly impossible. Above ground storage tanks would be infeasible because most of Port tidelands are built-out and there is limited room for these facilities. Also, above ground storage tanks pose a vector hazard and a visual nuisance.

Similarly, the proposed alternative compliance options such as an offsite mitigation option or increasing the treatment area onsite also is not feasible for the Port. The land within the Port is largely built-out and area to use for additional treatment is extremely limited. Meeting this requirement would come at a cost to proposed projects that would make them infeasible. Furthermore, mitigation outside of the Port's jurisdiction is also not an option because the Port would not have the authority to enforce the implementation and maintenance of BMPs outside of its jurisdiction. The Port requests that the retention requirement be removed from the permit.

6. Predevelopment Design Reference Used for Hydromodification Controls

The Tentative Order requires the use of "pre-development (naturally occurring)" as a runoff reference condition for hydromodification controls. Establishing the

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pre-development condition of a site requires a reference start date, which is not outlined in the draft, and also requires accepted and defensible references to the **pre-development** soils, vegetation and topography which are also not identified in the permit. This requirement will also create additional and unnecessary costs to each jurisdiction and to the project without additional water quality benefits. A recommended alternative would be the use of a "**pre-project**" runoff reference. This reference point is already being used by the Copermittees in the current MS4 permit and has been used in other MS4 permits in the State. The Port requests that the **pre-development** design reference in the permit is replaced with **pre-project**.

7. Hydromodification Exemption

An exemption to hydromodification requirements that is in the current MS4 permit has been removed in the Tentative Order. The exemption applies to projects that discharge to conveyance channels that are stabilized (i.e. concrete lined) all the way to the receiving water. Hydromodification requirements are included in the permit to mitigate for potential erosion and channel degradation downstream of a development project. Projects that discharge to a stabilized conveyance channel do not present potential erosive impacts downstream or channel degradation therefore, the imposition of hydromodification requirements on such projects is unnecessary and will not provide water quality benefits. The Port requests that the hydromodification exemption for projects that discharge to stabilized conveyance systems be reinserted in the permit.

On behalf of the Port, I wanted to thank you for providing us the opportunity to engage with you and the other stakeholders through the public workshops, and the ability to submit comments on the Tentative Order. Please contact Allison Vosskuhler at (619) 686-6434 or avosskuhler@portofsandiego.org if you have any questions or would like additional clarification on the information provided.

Sincerely,



Randa Coniglio,
Executive Vice President, Operations
San Diego Unified Port District

cc: Paul Fanfera
Bill McMinn
Karen Holman
Allison Vosskuhler

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