

Board and Executive Director  
California Regional Water Quality Control Board  
San Diego Region 9  
9174 Sky Park Court, Suite 100  
San Diego, CA 92123

May 14, 2009

RE: Tentative Order No. R9-2009-0002  
NPDES NO. CAS0108740

Waste Discharge Requirements for Discharges of Runoff from the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watershed of the County of Orange, The Incorporated Cities of Orange County, and The Orange County Flood Control District Within the San Diego Region

Subject: SDRWQCB Workshops for South OC MS4 Permit

Board and Staff,

A number of salient issues have been raised in recent weeks during SDRWQCB sponsored MS4 Permit Workshops. The workshops offer an invaluable dialogue among Co-permittees, regulators and members of the community concerned with future permit requirements and potential deficiencies.

Among key issues are:

1. Enforcement
2. Monitoring
3. Remediation

Enforcement - Rights versus Responsibilities for "Liquid Waste"

Most residents in the Aliso Watershed have immigrated to the area over the last five to ten years accompanying the recent real estate development boom. Most often, new residents are emigrating from wet climates with abundant native water resources and little or no awareness of their cumulative impacts to coastal receiving waters. Watersheds throughout the American East and Midwest are often polluted while coastal wetlands and ocean receiving waters degraded to create submerged eutrophic wastelands. The Mississippi River coastal receiving waters are a 100 square mile dead zone from inland runoff pollution.

Psychologists and sociologists understand the difficulty of changing individual and group behaviors. For instance, in California over 40 years of laws prohibiting litter have likely reduced some volumes of trash yet litter continues to accumulate on local streets and highways. Rain and dry weather nuisance flows transport litter that has originated from

being primarily paper byproducts in the 1950's to no-biodegradable plastic bags, packaging and similar debris.

New residents often bring habits and subcultures from distant states and nations that, while possibly beneficial in their place of origin, are unsuitable in the South Orange County ecology. Immigrant subcultures establish their own churches beside temples and synagogues to ghettoize the experience of living in a new communities recently appearing on the South Orange County landscape in just the last 20 to 30 years. Big green lawns, rolling forested greenbelts and Sunday car washing rituals that may have been part of their place of origin become sources of massive ecological damage to creeks, estuaries and coastal habitats. Individual habits associated with producing liquid waste are defended as inalienable rights.

Rights, however, are accompanied by responsibilities fundamental of which is the responsibility that my rights do not damage the rights for others to have a quality of life. When one group's "rights" damage the people's right to a healthy, productive natural environment with many health and social benefits, responsible publicly entrusted regulatory agencies such as the SDRWQCB are mandated and funded to control the impact of individual rights on others.

Urban runoff is a form of "liquid waste" requiring clean up and abatement actions similar to methods employed to discourage and clean-up litter and "solid waste". According to testimony at SDRWQCB workshops, communities such as Dana Point report an 85% demand for residential car washing as a "right" among respondents. Neighborhoods insisting upon the right to wash cars, over irrigate ornamental landscape and otherwise generate liquid waste have the responsibility to eliminate their collective impacts on downstream communities and fragile natural systems in the local semi-arid environment. Special systems for "Special People" demanding the right to waste water are the responsibility of the SDRWQCB and Co-permittees.

As people immigrate to South Orange County with different cultural attitudes towards water, habits associated with creating liquid waste in a semi-arid coastal region must not be allowed to damage the fundamental attributes of the overall ecology nor damage the rights of established coastal communities and unsuspecting beach visitors from the region and around the globe.

The Aliso Watershed is basically an "as built" environment. Unfortunately, with respect to urban runoff designs, the "as built" environment was built wrong. Centuries of engineering practices direct water away from buildings and away from developments to local creeks and coastal receiving waters away from immediate municipal responsibility. The engineering profession is the product of ancient practices that likely did not achieve regional benefits at their inception and now clearly are responsible for the extensive, massive, costly damage to a previously healthy watershed. The cumulative mistakes of improper engineering practices cannot be overestimated.

Built settings must be rebuilt to correct past deficiencies. An improperly wired house will not be permitted for occupancy by any city until remediation of deficiencies is implemented. Likewise, when cities accept significant increases in the property tax base from large-scale residential developments they are obliged to insure these revenue sources are properly built to eliminate negative environmental impacts to downstream habitats, communities and recreational users. Environmental justice requires the SDRWQCB to enforce measures capable of immediate clean-up and abatement of non-permitted flows. The absence of full enforcement throughout the present permit cycle by the SDRWQCB to demand cessation of dry weather nuisance flows with known pollutants is among the primary causes for the past seven years of habitat degradation and ocean pollution. Over 1.5 billion gallons each year of dry weather flows are illegally discharged at the mouth of Aliso Creek allowing Co-permittees to economically benefit from pollution by avoiding basic expenditures for point source controls.

The costs associated with educating and savings in water conservation offsets enforcing wise water management. Moreover, the expensive restoration of damaged ecosystems, loss of safe and healthy recreation opportunities and, eventually, diminished property values from polluted water tax strained public revenue sources. The right to live in South Orange County carries the responsibility to respect the rights of others, including natural wildlife and seafaring communities, to live in a non-polluted, healthy environment. The SDRWQCB cannot allow use of wildlife mitigation parks and natural creeks as flood control channels for the residential development industry's liquid waste.

#### Monitoring - Redirect funds to eliminate discharge at end of pipe.

Extensive monitoring activities waste precious limited local revenues needed for infrastructure repairs. Rather than monitoring an obviously distressed and dying watershed, funds should be reallocated to support clean up and abatement initiatives. A "Zero tolerance" dry weather discharge policy with dramatic, punitive penalties and fines can reduce reporting requirements to a minimum while advancing immediate solutions to water pollution.

With over 20 years of monitoring data, the SDRWQCB can identify subwatershed residential developments with special needs in relation to waste water. "Special need" communities must be required to intercept, treat and promote beneficial reuse of low flows at individual residential, neighborhood and development levels of analysis. Co-permittees must upgrade and commit funds for installation; operations and maintenance over the prescribed five year permit timeframe.

Funding can be derived from fines, subwatershed "Urban Runoff Special Districts for Gross Dischargers" within specific residential development boundaries, runoff/capture/reuse revenues and bond funding among rainwater utility districts are among potential capital resources. Simple low flow diversion inserts consisting of stormdrain T-fittings and shallow dry wells can transport non-permitted flows to centralized package treatment plants or POTW facilities.

## Remediation - Restore Natural Flow Regimes to Receiving Waters

All habitats are water dependent. Too little water leads to creek dehydration and loss of plant and wildlife. Too much water induces flooding and loss of plant and wildlife.

The MS4 System of the Aliso Watershed represents a failed engineering design. Too much water from storm events and dry weather nuisance flows are systematically directed to Aliso Creek and coastal receiving waters under the regulatory responsibility of the SDRWQCB. Remediation must first re-engineer anthropogenic induced flows to remain within the residential development boundaries utilizing a variety of Low Impact Development practices. Peak storm flows can be re-conceptualized as a critical resource in a drought stricken, semi-arid ecology and source of revenues from local rainwater capture techniques. Each gallon of rainwater captured for beneficial reuse saves on costly repairs to Aliso Creek and surrounding infrastructure. Rainwater polished for local reuse will also generate funding for operations and maintenance of filtration equipment.

The SDRWQCB has access to funding mechanisms to promote wise water management. Co-permittees should be provided with incentives and prompt, efficient technical assistance to acquire state and federal funding in remediating impacts caused by failed engineering projects and infrastructure within the watershed.

The opportunity to correct previous deficiencies in the MS4 Permit must not be undermined by Co-permittee reluctance to take responsibility for their individual and collective negative impacts to protected receiving waters. Wise water management will ultimately save money in monitoring and possible future litigation. Beneficial reuse of "liquid waste" represents a hallmark feature of the recycle paradigm prevalent in today's management of solid waste. As built communities with failed runoff management systems can be re-built correctly.

Thank you for reviewing the preceding comments and recommendations in crafting a genuinely effective MS4 Permit for South Orange County.

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