



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
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San Francisco, CA 94105

FAX TRANSMITTAL

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105-3901

September 28, 2009

James Smith  
San Diego Regional Water Quality Control Board  
9174 Sky Park Court, Suite 100  
San Diego, CA 92123

Re: Draft MS4 Permit for South Orange County (NPDES Permit No.  
CAS0108740)

Dear Mr. Smith:

The following are EPA Region 9's comments on the August 12, 2009 draft permit for discharges from the South Orange County Municipal Separate Storm Sewer System (MS4) within the jurisdiction of the San Diego Regional Board (SDRB) (NPDES permit No. CAS0108740).

Region 9 submitted comments on the previous draft permit of March 2009 in letters to the SDRB dated May 14, 2009 and June 18, 2009. We believe significant progress has been made in the August 2009 draft permit in addressing our comments on the previous draft. Region 9 supports adoption of the latest draft permit, with a few relatively minor revisions and clarifications as described below.

**A. Low Impact Development (LID) Requirements**

As we pointed out in our previous letters, Region 9 is seeking clear, measurable, and enforceable LID requirements in MS4 permits. The LID requirements of the latest draft are quite similar to the requirements in the North Orange County MS4 permit adopted in May 2009, with Region 9's support, by the Santa Ana Regional Board (SARB). We believe the SDRB's draft permit would be consistent with our objectives for LID implementation with a few minor revisions discussed below:

1) Page 8 (Finding D.2.c) – We recommend either removing the word “filtration” or replacing it with “retention.” This would be consistent with the draft permit's Part F.1.d.(4)(d) which requires LID BMPs to be sized and designed to ensure onsite retention of the design storm event. We believe this would also better mirror the intent of mimicking natural hydrology via infiltration, harvesting and reuse, or evapotranspiration of stormwater, as opposed to the use of filtration systems which result in stormwater flows into the MS4 via underdrains.

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2) Page 31 (Part F.1.c.8) – The inclusion of “LID biofiltration” in this section pertaining to large development projects is inconsistent with both section F.1.d.(4)(d) of the draft permit (described above) and with the SARB MS4 permit for Orange County (Part XII.C.2), where “bio-treatment” is only considered to meet that permit’s LID provisions if infiltration, harvesting and reuse, or evapotranspiration are not feasible. This section should be revised to clarify that retention BMPs are preferred, and that the use of biofiltration will comply with this provision only if retention BMPs are not feasible.

3) Page 31 (Part F.1.c.8) - At the first mention of the feasibility of onsite retention or “LID biofiltration” there should be a reference to the requirement that feasibility criteria will be proposed by the co-permittees and approved by the Executive Officer (EO). Based on the mention of a “technical feasibility analysis” in section F.1.d.7., it’s our understanding that it’s the intent of the permit that this analysis must be submitted for the approval of the EO as part of the standard stormwater mitigation plans (SSMPs), and will be subject to public review and comment. The permit should be clarified to explicitly state the expectations for the timing of the submittal of this analysis and the review and approval process. These expectations should be included initially in this section, which is the first instance in the permit where this analysis would apply.

4) Page 34 (Part F.1.d.4.(a)(iv)) – We recommend deletion of the words “filter” and “detain” since they are not consistent with the intent of onsite retention as noted above.

5) Page 36 (Part F.1.d.4.(d)(ii)) - Given the mention of technical infeasibility in this section, it should be noted here that the conclusions on feasibility will be made based on the approved feasibility analysis.

6) Page 36 (Part F.1.d.4.(d)(iii)) – We recommend the word “may” be changed to “must” to ensure conventional treatment is required when LID is determined to be infeasible.

7) Page 39 (Part F.1.d.7) – As noted above, mention of the technical feasibility analysis should clarify expectations for the submittal of this analysis along with the fact that there will be an opportunity for public review and comments, and ultimate approval by the EO.

#### ***B. Total Maximum Daily Loads (TMDLs)***

As you know, the Baby Beach TMDL has not yet been approved by the State Office of Administrative Law (OAL) or EPA. Accordingly, Finding E.11 is not currently accurate in stating that the permit includes wasteload allocations (WLAs) from fully approved TMDLs. However, we anticipate the Baby Beach TMDL will be approved by OAL and EPA prior to permit adoption, and we suggest you proceed under this assumption.

We also suggest the following clarifications and revisions related to the proposed TMDL requirements of the permit:

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- 1) Page 79 (Part I) – The reference to Finding E.12 appears to be an error, and should be corrected.
- 2) Page 79 (Part I.1.a) - Although Finding E.11 identifies the particular co-permittees which are affected by the TMDL requirements, it would be helpful for additional clarification to include the names of these co-permittees in Part I.1.a of the permit as well.
- 3) Page 79 (Part I.1.b) - The permit should contain clear expectations for monitoring to ensure achievement of TMDL WLAs. Given that the referenced TMDL does not include a clear monitoring plan, the permit should require submittal of a monitoring plan, and specify the date by which this plan must be submitted.
- 4) Page 79 (Part I.1.c.) - Since the date for compliance with the dry weather WLA is five years after permit adoption, it appears erroneous to require both the wet weather and dry weather WLAs to be met by 2019, ten years after permit adoption. It should be noted that dry weather WLAs must be met by the end of 2014.

**C. *Numeric Effluent Limits for Non-Stormwater Discharges***

In our previous letter of May 14, 2009, we supported the inclusion of numeric effluent limits for non-stormwater discharges, and we continue to do so. Establishing these limits is consistent with section 402(p)(3)(B)(ii) of the Clean Water Act, which states that permits for municipal stormwater must effectively prohibit non-stormwater discharges into the storm sewers.

- 1) Page 22 (Part C.4) - We recommend clarification regarding the “representative percentage” of the major outfalls/stations which will be monitored. The permit should provide expectations for the magnitude of required monitoring pursuant to this section.
- 2) Page 23 (Table 4.a.2) – It appears that the numeric values in the columns for the saltwater AMELs and MDELs should be reversed, i.e., the MDELs should be the larger numbers.

**D. *Stormwater Action Levels***

We fully support the inclusion of stormwater action levels (SALs) in the permit. These requirements help to clarify MEP. We recommend the fact sheet include additional information describing how the particular values for the SALs were derived.

- 1) Page 25 (Part D.2.) - Again, the permit requires sampling of a “representative percent of the outfalls.” Both here and in Part C.4, the permit should provide some degree of specificity so that the permittees and the public have an idea of the expectations for the number of outfalls to be monitored.

**E. *Retrofitting Existing Development***

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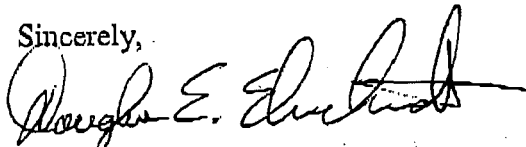
We fully support the proposed requirements in the permit for retrofitting existing development with additional controls such as LID. The benefits of adding LID measures in particular in new developments have been documented in numerous reports of which the Board is well aware. Such benefits would also accrue from adding LID to existing developments. In addition to the support provided by the fact sheet, we would note that such requirements are encouraged by the State's 2005 report entitled "NPDES Stormwater Cost Survey" which also investigated alternative approaches to stormwater control.

**F. Hydromodification**

We are pleased to see the draft permit continues to include requirements related to hydromodification, and that clear, measurable requirements are included to address the issue. We believe the requirements are fully supported in the fact sheet and are consistent with the requirements of other recent MS4 permits in California.

We appreciate the opportunity to provide input on the draft permit. If you would like to discuss these comments, please contact John Tinger at (415) 972-3518, or Eugene Bromley at 415-972-3510.

Sincerely,



Douglas E. Eberhardt, Chief  
NPDES Permits Office