



COUNTY OF ORANGE
RESOURCES & DEVELOPMENT MANAGEMENT DEPARTMENT

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April 4, 2007

By E-mail and U.S. Mail

John H. Robertus
Executive Officer
California Regional Water Quality Control Board, San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4353

Subject: Tentative Order No. R9-2007-0002; NPDES No. CAS0108740

Dear Mr. Robertus:

We are in receipt of the February 9, 2007, Waste Discharge Requirements for Discharges of Urban Runoff from the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds of the County of Orange, the Incorporated Cities of Orange County, and the Orange County Flood Control District within the San Diego Region (Tentative Order No. R9-2007-0002) (NPDES No. CAS0108740). The County of Orange, as the Principal Permittee, welcomes the opportunity to provide comments on the Regional Water Quality Control Board's ("Regional Board") Tentative Order as prepared and distributed by the Regional Board staff. The Copermittees were involved in the development of these comments and the cities of Aliso Viejo, Laguna Hills, Laguna Niguel, Laguna Woods, Lake Forest, Mission Viejo and Rancho San Juan Capistrano, Santa Margarita have directed that they be recognized as concurring entities.

The Copermittees reserve the right to submit additional comments up to the close of the public comment period. In order to accommodate the need for discussions with Regional Board staff to attempt to resolve our many concerns, the Copermittees hereby request that the Regional Board extend the comment period beyond the scheduled April 11 hearing.

The Orange County Stormwater Program (the "Orange County Program or Program") has been in existence under a National Pollutant Discharge Elimination System (NPDES) permit since 1990. The permit was reissued in 1996 and 2002. The Program is now a mature program, recognized as a statewide leader in municipal stormwater management. To provide a sound technical basis for the fourth term permit, the Copermittees conducted comprehensive program assessments using a multiple lines of evidence approach, including audit findings and the California Stormwater Quality Association (CASQA) Program Effectiveness Guidance. Based on these assessments, the Copermittees prepared and submitted the 2006 Report of Waste Discharge ("ROWD") to Regional Board staff. The ROWD identified many positive program outcomes, and where the assessments indicated improvements are needed, the Copermittees

proposed changes and added commitments to the Drainage Area Management Plan (“DAMP”), the foundational guidance and policy-setting document for the Program.

The Copermittees developed the ROWD, including the proposed DAMP, to provide strategic direction for the management of future water quality improvements. Given the progress of the Orange County Program to date, the demonstrated commitment of the Copermittees, and the comprehensive assessments of Program effectiveness, the Copermittees expected the ROWD and the revised DAMP would provide the basis for the fourth term permit. Instead, the Tentative Order imposes a management strategy and new technical requirements on the Orange County Program that may confound the ability of the Copermittees to deliver the water quality improvements that the Regional Board and the Copermittees seek to obtain. The Tentative Order imposes unnecessary burdens on the resources of the Copermittees and fails to provide any justification for disregarding many of the approaches set forth in the ROWD and revised DAMP.

We look forward to meeting with you to discuss these matters and achieve a satisfactory resolution. In the meantime, we have summarized our overarching concerns with the Tentative Order as General Comments in this letter and provide additional comments and concerns in the following Attachments:

- Attachment A presents comments on our main legal and policy issues.
- Attachment B presents technical comments and suggested language on specific requirements contained within the Tentative Order.
- Attachment C includes comments on the Monitoring and Reporting Program.

GENERAL COMMENTS

I. The Orange County Program is a Mature and Successful Program – A State Leader in Municipal Stormwater Management

At the inception of the Program the County of Orange and the 12 Copermittees developed a DAMP to serve as the principal policy and guidance document for the entire program. Over successive permit terms the Copermittees have modified the DAMP through an iterative development process designed to better reflect the needs of the Copermittees, ensure Copermittee accountability and deliver positive water quality and environmental outcomes. The DAMP now comprehensively guides each Copermittee in the development of its Local Implementation Plans (LIP), which describes how the program will be implemented on a city/jurisdiction basis. The DAMP also includes for each watershed in the San Diego Region an action plan that details the Copermittees’ pollution prevention and control efforts on a watershed level related to constituents of concern, particularly those on the 303(d) List.

The Orange County Program has matured and made significant advances in stormwater pollution prevention and control with the DAMP as its foundational document. The DAMP serves as the basis for organizing our efforts and obtaining the necessary commitments of local governments to a common plan of attack. The result is that the Orange County Program has gained the strong participation and commitment of each of its local government jurisdictions to water quality improvements served by the Program. This level of participation and commitment has enabled the Program achieve many of its goals:

- The Orange County Program is proactive.

- The Copermittees are engaged in the Program and provide valuable input into the process.
- The program uses several separate, but highly inter-related water quality planning processes to address urban sources of pollutants
- The Program recognizes the benefits of watershed-based planning and regional controls and has an increased emphasis to support these approaches as foundational to the success of the program.
- The Copermittees adaptively manage the Program - the iterative process is actively employed and the necessary program modifications proposed and incorporated into the program.
- The existing framework and implementation of the program meets or exceeds the permit requirements.
- Throughout its history, the Program has received and continues to receive the significant funding and resources it requires to ensure its success.

As a result of the long history of Program development and achievement, the Orange County Program has become a statewide leader in municipal stormwater quality management efforts. For example, the Copermittees have been actively involved in the efforts of CASQA in developing and applying the practice of stormwater program effectiveness assessment. In addition, the Program has received statewide recognition for the excellence of its public education program, Project Pollution Prevention, and the South Orange County Integrated Regional Water Management Plan recently prevailed in statewide competition for \$25 million in grant funding. This progress points an Orange County Stormwater Program that would now benefit from general regulatory direction rather than prescriptive requirements.

II. Toward Attaining Water Quality Standards – Where Do We Go From Here?

Where we want to get to and how we want to get there during the course of the fourth term permit, is set forth in the 2006 ROWD, which includes the proposed DAMP for the period 2007-2012 (“Proposed DAMP”). The ROWD describes the Copermittees' compliance activities, enumerates Program accomplishments, and based upon comprehensive assessments of program effectiveness and the iterative process for achieving water quality standards, identifies the programmatic changes necessary to address areas of the Program that can be improved.

A. The ROWD and the Proposed DAMP Provide a Sound Basis for the Fourth Term Permit.

The Copermittees spent a significant amount of time and energy developing the ROWD and Proposed DAMP. As a part of this process, the Copermittees conducted comprehensive effectiveness assessments using the CASQA Program Effectiveness Assessment Guidance. The Orange County Program is one of the few programs to date to have actively defined a series of performance metrics and used an assessment framework to define the relationships between compliance actions and positive changes in water quality. This assessment process is important because it measures the success of the Program in terms of its achievement of water quality improvements. It further provides a basis for identifying the changes that are needed to improve the Program's effectiveness in achieving water quality goals. The ROWD and the Proposed DAMP are, therefore, based on rigorous systematic assessments that should provide a sound technical basis for the fourth term permit.

Given the strong technical basis for the recommendations presented in the ROWD and the Proposed DAMP, and the commitments of the Copermittees to the success of the Program, our ROWD and Proposed DAMP deserve the respect and consideration of the Regional Board and its staff. It appears, however, that the Tentative Order, to a large extent, disregards the demonstrated successes of the Program, overrides the thoughtful recommendations in the ROWD without any justification and dismisses the Proposed DAMP as simply "procedural correspondence."

B. The Tentative Order Unreasonably Limits the Use of Regional BMP Treatment Controls and Innovative Approaches.

While the Copermittees and Regional Board are in agreement that, at the end of the day the common goal is to improve stormwater quality, the way in which this is achieved and the necessary timeframes for achieving Program improvements clearly differ. The Attachments to this letter identify and discuss many of these differences in detail. The most troubling of these are the limitations imposed on the location of treatment control BMPs. By its two Findings that (1) natural drainages, whether channelized or not, that are used to convey urban stormwater are both a "receiving waters" and an MS4, and (2) that treatment of urban stormwater must take place prior to discharge from an MS4 to a receiving water, the Tentative Order effectively mandates a "site-by-site" approach to stormwater treatment. This mandate is not supported on a technical basis or required by law, and it severely limits the ability to effectively manage stormwater in a manner that will help ensure attainment of water quality standards and maintain key watershed hydrologic and geomorphological processes.

For example, the Copermittees' efforts to address pathogen indicator bacteria unequivocally demonstrate the need for a regional treatment approach. Because it has been discovered that bacteria are incubated throughout the MS4 and receiving water system, effective treatment designed to improve water quality at Orange County beaches must occur at the end of the system prior to discharge to estuary and ocean receiving waters. Indeed, as a result of the coordinated efforts of the Orange County Program and implementation of regional controls, such as diversions and treatment systems, the Copermittees were able to make data submittals that now support 303(d) delisting of certain Orange County's beaches for pathogen indicator bacteria. While this delisting effort clearly represents a significant outcome, protecting beaches is not the only goal, of course, because the streams also have beneficial uses, including recreation. However, the watershed approach and the iterative process of implementation support the prioritization of efforts and an initial emphasis on protecting recreational uses in the places where the vast majority of those uses occur, which in South Orange County is at the beaches. Moreover, if regional treatment can protect public health by preventing pollution from reaching heavily used beaches, this approach should not be explicitly prohibited because it does not also solve all of the other water quality problems that we have identified.

From the perspective of future urban development, applying the proposed BMP site requirements at a project level may lead to poor project design from a broader sub-watershed and watershed level of analysis. The geomorphologic planning principles being given practical expression in the Rancho Mission Viejo project, place considerable emphasis on preserving sources of coarse sediments (e.g., sandy soils and crystalline terrains) important to streamcourse processes and beach sand replenishment by concentrating development in terrains that would otherwise generate fine sediments. Similarly, from a broader sub-watershed and watershed scale, it may be far better to avoid soils with high infiltration capabilities (e.g., sandy soils) by concentrating development in areas with higher levels of natural runoff rates (e.g. clayey soils) than to minimize impervious surface on a project-by-project basis.

These accomplishments and emerging and innovative approaches to surface water management and protection are threatened by overly restrictive and unnecessary limitations on the use of regional treatment BMPs.

C. The Fourth Term Permit Should be Based on the ROWD and the Proposed DAMP; Any Other Requirements Must Have a Strong Technical and Legal Basis and Be Supported With Appropriate Findings in the Tentative Order.

The Orange County Program has demonstrated continuous improvement over the past three permit terms. Looking forward, the Copermittees have provided a strong technical basis for the further improvements they have recommended in the ROWD. The Copermittee jurisdictions have the political will and adequate funding to achieve the Program policies and objectives as further detailed in the Proposed DAMP. For these reasons, the Regional Board and its staff should carefully consider the recommendations of the Copermittees as the basis for the fourth term permit. The Regional Board and its staff should incorporate other permit changes, especially more prescriptive programmatic requirements, only where they are necessary to achieve water quality improvements and are supported by strong technical justification and the requirements of the federal CWA. To the extent that such additional changes are incorporated into the fourth term permit, the Regional Board must set forth in the Fact Sheet/Technical Report the legal basis and technical justification for such changes and with appropriate Findings in the Tentative Order.

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We appreciate the effort that you and the Regional Board staff have devoted to development of the fourth term permit for the Orange County Program. We look forward to working with you and the staff to revise the Tentative Order to ensure that it meets our mutual goals. We trust that the comment period will be extended beyond April 11, 2007 in order to accommodate such discussions.

Thank you for your attention to our concerns. Please contact me directly if you have any questions. For technical questions, please contact Chris Crompton at (714)834-6662 or Richard Boon at (714)973-3168.

Sincerely,



for Bryan Speegle, Director
Resources & Development Management Department

Attachment A: Legal & Policy Comments
Attachment B: Technical Comments
Attachment C: Technical Comments on Monitoring Program

cc: Technical Advisory Committee
Permittees