

December 17, 2012

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State Water Resources Control Board
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Subject: Comment Letter – Revised Draft Phase II Small MS4 Permit

The County of Orange appreciates the opportunity to comment on the revised Phase II Small MS4 Permit (Draft Phase II Permit). While the County of Orange will not be subject to this Permit, key provisions will likely be precedential for future permit reissuances and consequently we are providing comments on the Draft Phase II Permit.

Receiving Water Limitations Language

The Receiving Water Limitations Provision (Provision D, pages 19-20) is an important and relevant issue for all stormwater permittees within the State. While the revised order does not modify Provision D per se, it addresses the issue (see Finding #38, page 38; Provision I, page 140; and the Fact Sheet, pages 25-26) by creating a reopener clause. We believe the State Water Board should not defer this issue until a later date (by the use of a reopener clause) and recommend that the State Water Board address the issue in this permit now. Following the November 20, 2012 workshop, we believe the State Water Board has sufficient input and cause to develop a resolution. It would provide important direction for Phase I Permit issuance including the San Diego Regional Permit.

Attachment J – Central Coast Post-Construction Requirements

We are concerned with the apparent escalation in permit requirements being conducted by the various Water Board permit writers in drafting provisions for land development. Over the last few years we have seen the ratcheting up of land development requirements in each MS4 permit reissuance without consideration of the impact/effectiveness of the prior development requirements or the key hydrologic principles of low impact development. This approach to standards has created an uneven playing field for communities and developers across the State. Furthermore, the clear absence of any consensus within the State on what are the appropriate requirements for land development (particularly with respect to hydromodification management) has damaged the credibility of stormwater regulation.

By appending the Central Coast requirements, and stating, “the Water Board expects to amend this Order to incorporate similar requirements for Permittees in the remainder of the State”, the Water Board has introduced an entirely new set of rules with insufficient time for Phase I or II permittees to fully evaluate the potential impacts of these standards. At a minimum, it is prudent to allow a full 5-year permit term to incorporate the requirements of Section E.12 to assess their effectiveness before initiating a new set of requirements. As discussed below, there are significant technical issues in the

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Region 3 requirements and, from our experience, considerable challenges implementing such mid-permit changes in the development planning process.

It is worth noting that the post-construction requirements contained in Section E.12 have been through a thorough two-year review process including CASQA, environmental organizations, permittees, and Water Board staff. The result is a set of straightforward and implementable LID and stormwater baseline hydromodification controls accomplishing most or all of the Region 3 requirements. This approach is one that Phase 1 permittees could also follow statewide.

With respect to technical issues, the Region 3 requirements are not appropriate for the following reasons:

- The Region 3 requirements are not only the most stringent and complex in the State; they are also unique and entirely untested. For example, there is no documented environmental benefit from retaining a 95th percentile storm event on small projects (15,000 sf and greater) in urban areas. It is well established that water quality control measures are most cost-effective and efficient when they target small, frequent storm events that over time produce more total runoff than the larger, infrequent storms targeted for design of flood control facilities. Typically, design criteria for water quality control BMPs and baseline hydromodification controls are set to coincide with the “knee of the curve”, i.e., the point of inflection where the magnitude of the event (and corresponding cost of facilities) increases more rapidly than the number of events captured. In other words, targeting design storms larger than this point will produce volume retention gains but at considerable incremental cost. This approach is the basis of most Phase I MS4 permits and the draft Phase II permit should retain capture of the 85th percentile, 24-hour storm.
- The Central Coast sizing criteria was placed in the Region 3 requirements after the public review process was completed in that region. As a result, key technical problems were not corrected. In particular, the sizing criteria uses an out-dated and incorrectly applied Water Environmental Federation MOP 23 approach that multiplies the retention/water quality volume by 1.963 in order to capture “all events up to and including” the 85th or 95th, as appropriate.
- The retention and hydromodification requirements, and some of the LID requirements, go significantly beyond those of existing or proposed statewide, regional, or local Phase I or Phase II MS4 permits in California. For example, thresholds for hydromodification requirements are much lower than existing or proposed permits (15,000 square feet and 22,500 square feet of created/replaced impervious surface for runoff retention and peak matching, respectively). Post-project vs. pre-project peak matching is required for the 2 through 10-year storm, which is beyond most existing requirements and more appropriate for flood control facilities. The technical basis for these requirements is unclear and in the absence of demonstrated environmental benefit, there is no justification for considering the Central Coast approach as a model for the State.

We request that you delete direct references to the Central Coast Post-Construction Requirements, including Attachment J, from the Draft Phase II Permit.

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Thank you for your consideration of our comments.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'CC', with a long horizontal flourish extending to the right.

Chris Crompton, Manager
Environmental Resources